

# ZONING BYLAWS FOR LEICESTER AS AMENDED THROUGH MAY 7, 2019

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# **ZONING BY-LAWS OF LEICESTER**

## **As Amended through MAY 7, 2019**

### **SECTION 1: GENERAL**

#### **1.1 AUTHORITY –**

This Zoning By-Law is adopted in accordance with the provisions of the General Laws, Chapter 40-A, "The Zoning Act."

#### **1.2 PURPOSE –**

To promote the health, safety, convenience, morals and general welfare of its inhabitants, to lessen the danger from fire and congestion, and to improve the Town under the provisions of the General Laws, Chapter 40-A. The use, construction, repair, alteration, and the height of buildings and structures and the use of premises in the Town of Leicester, Massachusetts, are hereby restricted and regulated as hereinafter provided.

#### **1.3 DEFINITIONS –**

In this By-Law, the following terms shall have meanings as described below:

**A PLACE OF AMUSEMENT-CARNIVAL or CIRCUS**, except for a period of less than seven (7) days, theme park or recreation park providing mechanical rides.

**ABANDONMENT**- Any voluntary relinquishment or disclaimer of a use of a lot or structure which is non-conforming or the discontinuation of such use for a period of two (2) or more years shall be considered an abandonment and such lot or structure shall not be used again except for a conforming use.

**ACCESS**- Access shall mean the actual or potential provision of vehicular entry onto a lot by means of its frontage on a street to a degree consistent with the use or potential use of the lot. In the case of a residential lot, access shall mean that (1) there is sufficient right of vehicular passage onto the lot from the street on which it has frontage and (2) vehicular passage is or may be provided between the frontage and the dwelling unit on the lot. (See also LOT, FRONTAGE, STREET)

**ACCESSORY APARTMENT**- The provision and regulation of accessory apartment units in one-family dwellings is intended to : 1) increase the diversity of housing options for town residents in response to demographic changes, particularly the demand for housing for senior family members; 2) encourage better utilization of existing housing stock, while maintaining the appearance and character of the town's single family neighborhoods; and 3) eliminate the continued construction of illegal unregulated apartment units. An accessory apartment is a dwelling unit constructed within and/or added onto a one-family dwelling or attached garage. Accessory apartments must be complete, separate housekeeping units that can be isolated from the original unit of the one-family dwelling. An accessory apartment shall not have more than one (1) bedroom. Only one (1) accessory apartment will be allowed within or added onto a one-family dwelling or its attached garage. The owner(s) of the residence in which or for which the accessory apartment is created shall reside on the premises. An accessory apartment shall be designed to maintain the appearance of a single-family residence as to the one-family dwelling of which it is a part, and shall be clearly subordinate to the one-family dwelling. Any exterior entrance to the apartment shall be located on the side or rear of the one-family dwelling, or of its garage. Any additions containing the apartment, in whole or in part, shall not increase the square footage of the original structure of the one-family dwelling by more than 700 square feet, nor shall space in an existing structure that is converted to an accessory apartment exceed 700 square feet. No more than two (2) persons may occupy an accessory apartment.

**ADULT BOOKSTORE**- an establishment having a substantial or significant portion of its stock in trade, books, magazines, and other matter which are distinguished or characterized by their emphasis depicting, describing, or relating to sexual conduct or sexual excitement as defined in M.G.L., Ch 272, Sec. 31.

**ADULT ENTERTAINMENT SIGNS**- any pictures, publications, video movies, covers or other implements, item or advertising that fall within the definition of Adult Book Store, Adult Video Store, Adult Paraphernalia Store, Adult Motion Picture theatre or establishment which displays live nudity for its patrons or are erotic, prurient or related to violence, sadism or sexual exploitation shall neither be displayed in the window of or on the building of, nor be visible to the public from pedestrian sidewalks or walkways or from other areas public or semi-public outside such establishments.

**ADULT LIVE ENTERTAINMENT ESTABLISHMENT** - an establishment which provides live entertainment for its patrons, which includes nudity, as that term is defined according to M.G.L., Ch. 272, Sec. 31.

**ADULT MOTION PICTURE THEATER** - an enclosed building used for presenting material distinguished by an emphasis on matter depicting, describing or relating to sexual conduct or sexual excitement as defined in M.G.L., Ch. 272, Sec. 31.

**ADULT PARAPHERNALIA STORE** - an establishment having a substantial or significant portion of its stock devices, objects, tools, toys which are distinguished or characterized by their emphasis depicting, describing, relating to sexual conduct or sexual excitement as defined in M.G.L., Ch. 272, Sec. 31.

**ADULT VIDEO STORE** - an establishment having a substantial or significant portion of its stock in trade, videos, movies or other film material which are distinguished or characterized by their emphasis depicting, describing or relating to sexual conduct or sexual excitement as defined in M.G.L., Ch 272, Sec 31.

**ALTERATION-** Any exterior construction, reconstruction, or other action resulting in a change in the structural parts or height, number of stories or exits, size or location of a building or other structure.

**BACKYARD CHICKENS** - Raising and keeping of up to fifteen (15) hens per lot depending on lot size in accordance with Section 5.17 and accessory to a one-family or two-family dwelling for personal consumption and enjoyment.

**BED AND BREAKFAST-** A house, or portion thereof, where up to six (6) short-term lodging rooms and breakfast are provided. No meals other than breakfast shall be served. No breakfast shall be served nor shall any retail and consumer services be provided to any member of the public not lodged as an overnight guest. The operator of the bed and breakfast shall live on the premises or in adjacent premises. The use as a bed and breakfast shall not substantially alter the appearance of the house as a residential dwelling. No exterior alterations shall be made to the building other than those required to ensure the safety of the structure or to provide improved accessibility for the handicapped. Rooms used for sleeping shall be part of the primary residential structure and shall not have been specifically constructed for rental purposes. Bed and breakfasts are intended for guests on intermittent visits, and shall not be used as long-term rental units or apartments. All parking for residents and guests shall be off- street.

**BREWERY, DISTILLERY, WINERY** - Establishment primarily engaged in the on-site manufacture, blending, fermentation, processing, and packaging of alcoholic beverages including beer, wine, hard cider and distilled beverages, for wholesale or retail distribution, as allowed by state law. The establishment may include accessory uses such as: tasting room for on-site consumption of the product produced on-site, retail sales of the product produced on-site and related goods, and/or tours of the production facility, provided that all production, processing, distribution, and storage activities are to be conducted within an enclosed building. Within the Suburban Agricultural (SA) district this shall mean an establishment that produces less than 15,000 barrels annually (a barrel being equivalent to 31 gallons). Such use in the SA district shall only be permitted on parcels containing a minimum of five (5) acres.

**BREW PUB:** Restaurants, licensed under the relevant state and federal statutes, to produce and sell beer, ale and/or hard cider at the location and whose primary business is the sale and preparation of food to be consumed on the premises. Malt beverages including beer, ales and hard ciders produced on the premises may be sold to other establishments but shall not exceed 25 percent of the establishment's production capacity.

**BUILDING-** A combination of any materials, whether portable or fixed, having a roof, to form a structure for the shelter of persons, animals or property. For the purpose of this definition "roof" shall include an awning or any similar covering whether or not permanent in nature.

**BUILDING ACCESSORY-** A subordinate building, the use of which is incidental to that of a principal building and not to be used for human habitation.

**BUILDING HEIGHT-** The vertical distance from the established lowest point of elevation of the finished surface of the ground, paving, or sidewalk within the area between the building and the property line adjoining the building to the highest point of the roof (or Parapet) for flat or shed roofs to the deck line for mansard roofs and to the mean height between eaves and ridge for gable, top and gambrel roofs. Not included are spires, cupolas, television antennae, or other similar structures.

**CHICKEN** – A type of domesticated fowl, a subspecies of red junglefowl.

**CHILD CARE FACILITY-** a child care center or a school-aged child care program, as defined in MGL Chapter 15D, Section 1A and regulated by MGL Chapter 40A, Section 3.

**CLEAN FILL-** Clean fill shall be friable soil containing no stumps or roots greater than 4" in diameter and shall not contain concrete, brick, asphalt, metal or other trash or debris and shall be free of contamination as defined by the Massachusetts Department of Environmental Protection (DEP).

**CONTRACTOR'S YARD-** A lot used by an individual building contractor or sub-contractor for storage of equipment (including commercial landscaping equipment), supplies, and sub-assemblies, or parking of registered construction vehicles.

**DRIVE-IN ESTABLISHMENT-** The term "drive-in" includes drive in eating establishments where food is purchased from a building on the lot but is consumed in the vehicle or off the lot; and drive in service establishments such as banks, a car wash, or similar business establishments where patrons conduct business without getting out of their vehicle.

**DWELLING-** A building erected for occupancy as a place of continuous residence for an individual or family, or designed for such occupancy on a site intended as the permanent location of such a building.

**FAMILY CHILD CARE HOME-** a family child care home or large family child care home, as defined in MGL Chapter 15D, Section 1A and regulated by MGL Chapter 40A, Section 3.

**FARMERS' MARKET-** A temporary market, usually held out-of-doors, where farmers can sell their produce, other edible farm products, flowers, preserves and similar products to the public. Products at such markets should be locally and/or regionally grown. Farmers' Markets shall not include the construction of permanent structures and are limited to no more than 52 total days per calendar year. Written approval of the property owner is required. All signs, trash and debris shall be removed from the site upon the termination of the activity. Farmers' Markets must be located on a site with adequate ingress and egress and sufficient parking as determined by the Zoning Enforcement Officer. Farmers' Markets are subject to regulation by the Board of Health. The Board of Selectmen may adopt Farmers' Market Rules and Regulations.

**GASOLINE STATION** – a commercial gas station providing fuel to primarily passenger vehicles, not to include vehicle service or repair.

**HEN** – An egg-bearing chicken or female chicken beyond 16 weeks of age

**HOME OCCUPATION-** An accessory use which by custom has been carried on entirely within a dwelling or accessory building unit, and is incidental and subordinate to the dwelling use. Such use shall not in any manner change the residential character of the building or premises, except as provided under Section 6.4.02 of this By-Law.

**INTENSITY REGULATIONS-** Regulations relating to the size of a lot and to the spacing of buildings upon the lot.

**KENNEL, COMMERCIAL-** The owning, boarding or housing of dogs three months old or over for the purpose of breeding, grooming, boarding, sale, training, or any other use which is considered to be part of a commercial business, whether or not operating for profit. Any kennel or other structure used by dogs shall be no closer than 50 feet to any lot line and no closer than 75 feet to any existing dwelling located beyond any lot line. A commercial kennel shall be located in a separate structure not used for human habitation. In accordance with Leicester's General By-laws and Massachusetts General Law, a kennel license is required for this use. Disposal of animal waste must comply with state and local board of health regulations as applicable.

**KENNEL, PRIVATE-** The keeping of more than three (3) dogs three months old or over owned or kept by a person on a single premise for the private use of the owner for show, hunting, or domestic pets and not for the purpose of breeding, grooming or any other use which is considered to be part of a commercial business. The keeping of more than six (6) dogs for any purpose shall be considered a commercial kennel for the purposes of this zoning bylaw, except that a separate structure is not required. In accordance with Leicester's General Bylaws and Massachusetts General Law, a kennel license is required for this use. Disposal of animal waste must comply with state and local board of health regulations as applicable.

**LIVESTOCK** - animals raised for domestic use including horses, cattle, goats, sheep, llamas, donkeys, chickens, geese, ducks, turkeys, rabbits, and other similar animals kept for food or labor excluding swine and fur-bearing animals.

**LIMITED FRONTAGE LOT-** By Special Permit from the Zoning Board of Appeals, a lot may be considered a build-able lot if it has a minimum frontage of fifty (50) feet in the residential zones R1, R2, BR1 and SA, provided that the lot area is at least equal to or greater than the required amount of area for said zone. No part of the lot between the front line of the building and the street line may be less than fifty (50) feet in width. All other dimensional requirements of the district on which the lot is located shall be met. Any additional division of said

parcel of land would be subject to the subdivision regulations in existence at the time. Access must be across the front of the lot and in accordance with the Zoning By Laws of the Town of Leicester. The driveway to the dwelling on the lot shall not be more than 500 feet in length and must be gravel if not paved and installed in accordance with the Town of Leicester Zoning Bylaws. The provisions of this Section shall not apply to any lot shown on a definitive subdivision plan under M.G.L. c41, sec 81(O) or to a lot which being owned in common with other lots could be configured to conform to the dimensional requirements of the zoning district.

**LOT-** A single or continuous parcel of land held in the same ownership throughout.

**LOT, CORNER-** A lot at the point of intersection of and abutting on two or more intersecting streets, the interior angle of intersection of the street lot lines, or in the case of a curved street, extended lot lines, being not more than 135 degrees.

**LOT, DEPTH-** The mean horizontal distance between the front lot line and the rear lot line.

**LOT, FRONTAGE:** The continuous distance measured along the front lot line between the points of intersection of the side lot lines with the front lot line.

**LOT, FRONTAGE, STREET-** A street which provides the required lot frontage for a building and the primary access to the lot. The principal permitted building on the lot shall be numbered on such frontage street. When a lot is bounded by more than one street, any one of them, but only one, may be designated as the frontage street by the owner, provided that the street meets the frontage requirement. When a lot is bounded by another municipality, the principal permitted building in Leicester must be numbered on a street within Leicester and gain access from said street. (See definitions of ACCESS and STREET)

**LOT, NONCONFORMING-** A lot lawfully existing at the effective date of this by-law, or any subsequent amendment thereto, which is not in accordance with all provisions of this by-law.

**LOT, WIDTH-**The width measured along a straight line so placed as to constitute the minimum distance between the side lot lines and upon which no point shall be closer than the required setback to the street.

**LOT LINE, FRONT-** The property line dividing a lot from a street (right of way). On the corner lot the owner shall designate one street line as the front lot line.

**LOT LINE, REAR:** The lot line opposite from the front lot line.

**LOT LINE, SIDE:** Any lot line not a front or rear lot line.

**MAXIMUM BUILDING COVERAGE-** Maximum building coverage shall be computed as the percentage of the total lot area which may be covered by all principal and accessory buildings and structures.

**MARIJUANA:** Marijuana or Marihuana means all parts of any plant of the genus Cannabis, not excepted below and whether growing or not; the seeds thereof; and resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture or preparation of the plant, its seeds or resin including tetrahydrocannabinol as defined in section 1 of chapter 94C; provided that "Marijuana" shall not include: (1) the mature stalks of the plant, fiber produced from the stalks, oil, or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture or preparation of the mature stalks, fiber, oil, or cake made from the seeds of the plant or the sterilized seed of the plant that is incapable of germination; (2) hemp; or (3) the weight of any other ingredient combined with marijuana to prepare topical or oral administrations, food, drink or other products. Marijuana also includes marijuana products except where the context clearly indicates otherwise.

**MARIJUANA CULTIVATOR:** an entity licensed to cultivate, process and package marijuana, to deliver marijuana to marijuana establishments and to transfer marijuana to other marijuana establishments, but not to consumers.

**MARIJUANA ESTABLISHMENT:** a licensed Marijuana Cultivator, Marijuana Testing Facility, Marijuana Product Manufacturer, Marijuana Retailer, or any other type of licensed marijuana-related business or businesses at a single location except a medical marijuana treatment center.

**MARIJUANA ESTABLISHMENT, NON-RETAIL:** a marijuana establishment that does not involve on-site retail sales to consumers, including Marijuana Cultivators, Marijuana Product Manufacturers that only sell to Marijuana Establishments but not consumers, Marijuana Testing Facilities, and Marijuana Transportation or Distribution Facilities.

**MARIJUANA RETAILER, CONSUMER SALES ONLY:** a marijuana establishment that involves on-site retail sales to consumers, excluding Marijuana Social Consumption Operators.

**MARIJUANA PRODUCT MANUFACTURER:** an entity licensed to obtain, manufacture, process and package marijuana and marijuana products, to deliver marijuana and marijuana products to marijuana establishments and to transfer marijuana and marijuana products to other marijuana establishments, but not to consumers.

**MARIJUANA PRODUCTS:** products that have been manufactured and contain marijuana or an extract from marijuana, including concentrated forms of marijuana and products composed of marijuana and other ingredients that are intended for use or consumption, including edible products, beverages, topical products, ointments, oils and tinctures.

**MARIJUANA SOCIAL CONSUMPTION FACILITY:** a “Marijuana Social Consumption Establishment” that is licensed by the Cannabis Control Commission where single servings of marijuana may be sold for consumption on the premises.

**MARIJUANA SOCIAL CONSUMPTION OPERATOR:** a marijuana retailer licensed to purchase marijuana and marijuana products from marijuana establishment and to sell marijuana and marijuana products on its premises only to consumers or allow consumers to consume marijuana and marijuana products on its premises only.

**MARIJUANA TESTING FACILITY:** An Independent Testing Laboratory as defined in 935CMR 500.002 licensed to test marijuana and marijuana products, including certification for potency and the presence of contaminants.

**MARIJUANA RETAILER:** an entity licensed to purchase and deliver marijuana and marijuana products from marijuana establishments and to deliver, sell or otherwise transfer marijuana and marijuana products to marijuana establishments and to consumers.

**MARIJUANA TRANSPORTATION OR DISTRIBUTION FACILITY:** an entity with a fixed location not otherwise licensed by the Cannabis Control Commission, that is licensed to purchase, obtain and possess cannabis or marijuana products solely for the purpose of transporting and temporarily storing the same on the premises for sale and distribution to Marijuana Establishments, but not consumers.

**MEDICAL MARIJUANA TREATMENT CENTER:** a not-for-profit entity registered under 105 CMR 725.100, also known as a Registered Marijuana Dispensary (RMD), that acquires, cultivates, possesses, processes (including development of related products such as edible marijuana infused products, tinctures, aerosols, oils, or ointments), transfers, transports, sells, distributes, dispenses, or administers marijuana, products containing marijuana, related supplies, or educational materials to registered qualifying patients or their personal caregivers for medical use. Unless otherwise specified, RMD refers to the site(s) of dispensing, cultivation, and preparation of marijuana for medical use.

**MIXED-USE DEVELOPMENT, VERTICAL MIX:** An integration of commercial and residential uses in a single building in which the residential uses are located above the ground floor.

**MIXED-USE DEVELOPMENT, HORIZONTAL MIX-** An integration of commercial and multifamily residential uses in a development comprised of two or more buildings on the same lot, or in a single building where residential use is on the ground floor.

**OWNER-** The duly authorized agent, attorney, purchaser, devisee, trustee, lessee or any person having vested or equitable interest in the use, structure or lot in question.

**PET GROOMING-** An establishment that offers pet grooming services. In residential districts (SA, R1, and R2), such use shall only be allowed as an accessory use carried out entirely within a dwelling or accessory structure and incidental and subordinate to the dwelling use. Such use shall not include boarding or other animal-related activity.

**RECORDED-** Recorded in the Worcester Registry of Deeds or registered in the Land Court.

**ROOSTER** – A male chicken over the age of 16 weeks

**SIGN-** Any structure, device, billboard, placard, painting, drawing, poster, letter, word, model, banner, pennant, insignia, trade flag or representation used as or which is in the nature of an advertisement, announcement or direction, or is designed to attract the eye by intermittent or repeated motion or illumination and which is visible from a street. House numbers shall not be deemed to be signs within the meaning of this by-law.

**SIGN, AREA OF-**

- (a) The area of a sign shall be considered to include all lettering, wording, and accompanying designs and symbols, together with the background, whether open or enclosed, on which they are displayed, any frame around the sign and any “cutouts” or extensions, but shall not include any supporting framework or bracing which are incidental to the display itself.



- (b) The area of a sign consisting of individual letters, designs or symbols attached to or painted on a surface, building, wall, or window, shall be considered to be that of the smallest quadrangle which encompasses all of the letters, designs, and symbols.
- (c) In computing the area of signs, both sides of V-shaped signs, but only one side of back-to-back signs, shall be counted.

**SIGN, STANDING:** Any accessory sign that is not attached to a building.

**STREET-** A street shall be

- 1) an improved public way laid out by the Town of Leicester, or the Worcester County Commissioners, or the Commonwealth of Massachusetts; or
- 2) a way which the Leicester Town Clerk certifies is maintained by public authority and used as a public way; or
- 3) a public or private way, improved in accordance with a plan approved and endorsed by the Planning Board under the Leicester subdivision rules and regulations and the subdivision control law; or
- 4) a way in existence as of the date of adoption of the Subdivision Control Law having in the opinion of the Planning Board sufficient width, suitable grades and adequate construction to accommodate the vehicular traffic anticipated by reason of the proposed use of the land abutting thereon or served thereby and for the installation of municipal services to serve such land and the buildings or structures erected or to be erected thereon.

**STRUCTURE-** A combination of materials assembled at a fixed location to give support or shelter, such as a building, bridge, trestle, tower, framework, retaining wall, tank, tunnel, tent, stadium, reviewing stand, platform, bin, fence, sign, flagpole or the like.

**STRUCTURE, NONCONFORMING-** A structure lawfully existing at the effective date of this by-law or any subsequent amendment thereto, which does not conform to one or more provisions of this by-law?

**TAXI OR LIMOUSINE SERVICE** – A for-profit transportation service providing a taxi cab or limousine for hire that is used in the business of transporting passengers for compensation. Such service is not allowed as a home occupation. Not to include a private vehicle used for ridesharing services.

**TRAILER OR MOBILE HOME-** A trailer or mobile home shall mean any vehicle or object on wheels so designed and constructed or reconstructed or added to by means of such accessories as to permit the use and occupancy thereof for human habitation, whether resting on wheels, jacks or other foundations, and shall include the type of vehicle commonly known as a Mobile Home, which shall be defined to mean a dwelling unit built on a chassis and containing complete electrical, plumbing sanitary facilities and designed to be installed on a temporary or permanent living quarters; and being less than 20 feet in width in its completed habitable form, but specifically excluding camping trailers.

**TRUCKING DEPOT** – a facility for parking and service of or tractor-trailer trucks or buses, which may include fuel services.

**USE-**The purpose for which a structure or lot is arranged, designed or intended to be used, occupied or maintained.

**USE, ACCESSORY-** The use of a building or premises for the purpose customarily incidental to the main or principal use permitted in the district.

**USE, NONCONFORMING-** A use lawfully existing at the effective date of this by-law or any subsequent amendment thereto which does not conform to one or more provisions of this by-law.

**VARIANCE-** Such departure from the terms of this by-law as the Board of Appeals, upon petition or appeal, in specific cases, is empowered to authorize under the terms of Sec. 6.4.03 herein.

**VEHICLE SERVICE OR REPAIR FACILITY** – an establishment providing services to primarily passenger vehicles. Not to include a junk yard or open storage of abandoned vehicles.

**VEHICLE STORAGE YARD:** site for open storage of abandoned or unregistered vehicles

**VETERINARY CLINIC-** An establishment maintained and operated by a licensed veterinarian solely to provide out-patient medical care to animals. The establishment shall not be used as a kennel or animal daycare. There shall be no boarding of animals and no outdoor facilities to house or exercise animals unattended.

**VETERINARY HOSPITAL-** An establishment maintained and operated by a licensed veterinarian solely to pro-

vide medical care to animals, which may include the boarding of animals limited to short-term care incidental to the hospital use. The establishment shall not be used as a kennel or animal daycare. There shall be no outdoor facilities to house or exercise animals unattended.

**YARD, FRONT-** A space extending for the full width of the lot between the front line of the nearest building wall and the front lot line.

**YARD, REAR-** A space, unoccupied, except by accessory structure or accessory use as herein permitted, extending for the full width of the lot between the rear line of the building and the rear lot line.

**YARD, SIDE** A space, unoccupied, except by an accessory structure or accessory use as herein permitted, extending for the full length of the building between the nearest building wall and the side lot line.

## 1.4 NONCONFORMITY

### 1.4.01 CHANGE OF NONCONFORMING USE-

Any nonconforming use of a structure may be changed to an- other nonconforming use provided that the change use is not a substantially different use, and approval for the change is granted by a Special Permit by the Board of Appeals. For the purpose of this section, a substantially different use is a use which by reason of its normal operation would cause readily observable differences in patronage, service, sight, noise, employment or similar characteristics from the existing nonconforming use or from any permitted use in the district under question.

### 1.4.02 ALTERATION AND EXTENSION OF NONCONFORMING STRUCTURES OR USES:

#### 1.4.02.1 General

Except where alteration, reconstruction, or extension of a single-family or two-family residential structure would not increase the nonconforming nature of said structure (see Section 1.4.02.2), a nonconforming structure or use shall be altered, extended, or reconstructed only upon issuance of a special permit by the Zoning Board of Appeals. No such alteration, reconstruction, or extension shall be permitted unless the Zoning Board of Appeals finds after a public hearing that such alteration, reconstruction, or extension would not be substantially more detrimental to the neighborhood than the existing nonconformity.

#### 1.4.02.2 One Family & Two Family Dwellings

Notwithstanding any other provisions of these Bylaws, alteration, reconstruction, extension or structural change (collectively "alteration") of a pre-existing, nonconforming single-family or two-family residential structure will be deemed not to increase the nonconforming nature of such a structure, and shall be permitted as of right, if:

- a.) the structure is located on a conforming lot, and the proposed alteration will comply in all respects with the By- laws, specifically the requirements for front setback, side and rear setbacks, building coverage, lot coverage, maxi- mum floors and maximum heights; or
- b.) the structure is located on a legally nonconforming lot, and the proposed alteration will retain the structure's existing footprint; or
- c.) the structure is nonconforming solely because of insufficient lot frontage or lot area, or both, and the proposed change shall meet all dimensional requirements for front setback, side and rear setbacks, building coverage, lot coverage, maximum floors and maximum height.

### 1.4.03 RESTORATION-

If any nonconforming structure is damaged by fire or other causes to the extent of more than fifty percent of its replacement value, it shall not be repaired or rebuilt unless such restoration is begun within one year from the time of the damage or destruction.

### 1.4.04 ABANDONMENT-

Any nonconforming use of a structure or lot which has been discontinued abandoned or not used for a continuous period of two or more years shall not be used again except for a conforming use.

### 1.4.05 OTHER-

Where not addressed in this section 1.4 or elsewhere in Leicester's Zoning Bylaw, non conforming lots, uses, and structures shall be regulated as provided in Massachusetts General Laws, Chapter 40A, Section 6.

## **1.5. ACCESSORY BUILDINGS**

### **1.5.01**

No accessory building or structure shall be located in the space extending for the full width of the lot between the front line of the nearest building wall and the front lot line unless otherwise provided for under Sec.6.4.02 of this by-law. No accessory building shall be located in any side yard area nearer to the side lot line than ten (10) feet, or in a rear yard area nearer the rear lot line than ten (10) feet, or nearer to another principal or accessory building than ten (10) feet.

### **1.5.02 SWIMMING POOLS-**

Swimming pools will be considered as an accessory use for the purpose of this by- law and all dimensional requirements will come under this section.

## **1.6 CORNER CLEARANCE**

Within the area formed by the lines intersecting streets and a line joining points on such lines twenty-five (25) feet distant from their point of intersection or, in the case of a rounded corner, the point of intersection of their tangents, no structure and no foliage shall be maintained between a height of three (3) feet and a height of eight (8) feet above the plane through their curb grades.

## SECTION 2: ESTABLISHMENT OF DISTRICTS

### 2.1 TYPES OF DISTRICTS

For the purpose of this by-law, the Town of Leicester is hereby divided into the following types of use districts:

FULL NAME	SHORT TERMS
Residential 1	R1
Residential 2	R2
Suburban-Agricultural	SA
Business	B
Industrial	I
Business-Industrial-A	BI-A

FULL NAME	SHORT TERMS
Recreational Development	RD
Business Residential-1	BR-1
Residential Industrial Business	RIB
Highway Business-Industrial District 1	HB-1
Highway Business-Industrial District 2	HB-2
Greenville Village Neighborhood Business Dist	NB
Central Business	CB

### 2.2 LOCATIONS OF DISTRICTS:

Said districts are established as shown, defined and bounded on the map entitled. "Zoning Map of Leicester, Massachusetts". Said map and all explanatory matter thereon are hereby made a part of this by-law.

### 2.3 DISTRICT BOUNDARIES

**2.3.01** Where the boundary of a district is shown on a map to follow the course of a street or road, the center line of such a way shall be the boundary line.

**2.3.02** A boundary line located outside of such a street or road and shown on the map as approximately parallel to the center line and distances shown on the map between such a boundary line and the street or road are the distances in feet from the boundary line to the center line of the street or road, such distances being measured at right angles to the center line unless otherwise indicated.

**2.3.03** In all cases which are not covered by the forgoing provisions of this section, the location of boundary lines shall be determined by the distances in feet, if given, from other lines upon said map, by use of identifications as shown on the map, and by directions and distances as they may be scaled and measured from the map.

**2.3.04** Where a district boundary line divides any lot existing at the time such line is adopted, the regulations for the less restricted portion of such lot may extend not more than thirty (30) feet into the more restricted portion, provided only that such lot has the required minimum frontage on a street in the less restricted portion for the existing or intended use of the premises.

### SECTION 2.3.05 RECREATIONAL DEVELOPMENT

(A) Intent	(F) Planning Principles and Requirements
(B) Definitions	(G) Natural Features Protection
(C) Objectives	(H) Recreation Areas
(D) Uses	(I) Non-Residential Uses
(E) Location and Density	(J) Administration

**(A).INTENT** The intent of this section is to provide recreational opportunities for the residents of Leicester, to allow more effective and efficient use of large tracts of land in the rural areas of Leicester, and to minimize Town service responsibilities.

**(B).DEFINITIONS** "**Recreational Area**" is a parcel(s) of land or an area(s) of water, or a combination of land and water within the site designated for a **Recreational Development**, maintained and preserved for active or passive recreational uses (such as a park, tennis courts, ball fields, swimming pools, golf courses, etc.), or for buffer areas, and designed and intended for the use or enjoyment of occupants of the Recreational Development and, in certain circumstances, the general public. Recreational Areas may contain such structures and improvements as are appropriate under the provisions of this Section. "**Recreational**

**Development"** (RD) is an area of land, designed and developed as a unit, with Recreational Areas as integral characteristics and which departs from the zoning regulations conventionally required in the Residential 1, Residential 2 or Suburban-Agricultural Districts concerning use of land or buildings, lot size, bulk or type of structures, or other requirements. Unless specifically prescribed, any combination of residential and compatible uses may be allowed.

**(C) OBJECTIVES**

- (1) To preserve natural topography and provide useable space for recreational facilities.
- (2) To insure appropriate, high quality design and site planning and a high level of environmental amenity
- (3) To eliminate Town service responsibilities for streets and utilities. (4) To allow flexibility and creativity in the design of developments through a carefully controlled Special Permit process of negotiation of particular plans.
- (4) To allow flexibility and creativity in the design of developments through a carefully controlled Special Permit process of negotiation of particular plans.

**(D) USES** Under the Special Permit described in this Section, only the following uses may be allowed

- (1) Recreational Areas
- (2) All Allowed Uses, Special Permit Uses, and Special Permit Uses Subject to Environmental Design Criteria under the B District (Section 3.2.02. 2, 2A, 4, 5. and 6.)
- (3) All allowed Uses, Special Permit Uses, and Special Permit Uses Subject to Environmental Design Conditions under the B District (section3.2.03. 2, 3, 6.)
- (4) Non-residential uses (hereinafter referred to as "NR Uses", which would consist of a pro shop, clubhouse or other recreational-type facilities or establishments in keeping with the nature and intent of this Section and the residential character of the RD.

**(E) LOCATION AND DENSITY** An RD may be established only in the SA, R1, or R2 Districts by Special permit issued by the Planning Board (which for purposes of this Section is designated as the Special Permit Granting Authority), provided that all proposed RD's shall comply with the standards of environmental design review. The density shall be 85% of that allowed for in the R1 District, EXCEPT as provided below. The minimum area of a tract eligible for an RD is two hundred (200) acres in a single or consolidated ownership or control at the time of application, and the tract must have five hundred (500) feet of direct frontage on a major street, as designated by the Zoning By-Law. Other dimensional requirements for a single-family dwelling or an NR Use within an RD are as follows:

Minimum Lot Size	20,000 Square Feet
Minimum Lot Front/feet	100'
Minimum Front Yard Setback	25'
Minimum Rear Yard	25'
Minimum Side Yard	15'

Other dimensional requirements for multi-family structures shall be governed by the provisions of Section 4.2, RIB, except that no more than 45% of the units within an RD may be multi-family, and all such units must be of a town- house type with separate entrances and with a maximum of eight (8) attached units per building. In calculating intensity of use and allocation of Recreational Areas, the following standards shall be used:

- (1) NR uses shall be subtracted from the total land area before calculating residential densities.
- (2) 50% of land and water areas contained in Flood Hazard Areas shall be subtracted from the total land area before calculating densities.
- (3) Areas which are considered by the Planning Board as marginal or unsuitable for building, such as flood plains, inaccessible wetlands and water areas, aquifer buffer zones and restrictive easement areas, steep slopes (25% or greater), highly erodible or poorly drained areas, areas of very shallow bedrock or of very high water table

shall, as a general rule, be included in the Recreational Areas.

**(4)** Roads shall be subtracted from total area in determining net densities. For preliminary and general planning purposes, roads may be estimated as fifteen percent (15%) of total area. For definitive plans, all lot sizes and densities as specified herein shall be net figures with rights of way for streets figured exactly.

**(5)** The total number of dwelling units in an RD shall be no greater than 85% of the total number of units that would otherwise be allowed by the Zoning By-Law in the B District. The Planning Board, however, may authorize additional units upon a finding that the proposed development includes proportional on-site and/or off-site improvements, including but not limited to Recreational Areas, roadways, sidewalks, and other such amenities, and based upon the ownership and maintenance of such facilities.

**(6)** In making the determination as to the number of allowable units, the Planning Board may require that the applicant provide satisfactory evidence that the number of units shown on the RD plan is no greater than the number that could otherwise be developed, including soil and other such tests.

**(7)** The Planning Board shall not grant a Special permit for an RD unless it is adequately demonstrated that the RD is superior in design and land use to a conventional development, and that the proposed RD is consistent with the objectives of this section. The Planning Board shall have the power to waive or exceed design standards and conditions in any circumstance deemed appropriate.

#### **(F) PLANNING PRINCIPLES AND REQUIREMENTS**

**(1) Land Uses and Recreational Areas** The Recreational Areas shall serve to unify the entire development visually and functionally, to buffer different types of uses within the development, to appropriately buffer the development from surrounding land uses, and to visually separate buildings or groups of buildings, whether on or off-site. It is intended that the different types of uses within an RD shall be related to each other in a logical manner such that all uses function compatibly.

**(2) Relationship of Land Uses** Uses shall be located and designed to serve the intended population efficiently.

**(3) Vehicular Circulation** Streets in the RD shall serve the functions and be designed to the standards prescribed in the Subdivision Rules and Regulations of the Town of Leicester. Collector and major streets shall normally be fronted on both sides by open space and shall have no direct frontage by single-family lots. Streets shall be designed to the standards of the current Leicester Subdivision Rules and Regulations, provided that the Planning Board may waive any part thereof which it deems inappropriate in specific instances.

**(4) Pedestrian Circulation** The presence of Recreation Areas throughout the development creates the opportunity for a pedestrian circulation system separate from the street system. Pedestrian paths through the Recreational Areas can be safer, more pleasant and often more direct than conventional sidewalks which must follow vehicular rights of way. Wherever possible and appropriate, pedestrian circulation shall be provided within the Recreational systems, minimizing street crossings and reducing the need for street side walkways. Where paths in the Recreational Areas can appropriately take the place of sidewalks, the Planning Board may waive the conventional side-walk requirement specified in the subdivision regulations.

**(G) NATURAL FEATURES PROTECTION** Because Recreational Areas are critical features of the RD, all Rd's shall have primary importance attached to natural feature, conservation requirements. Additional standards concerning the character and quality of the Recreational Areas are prescribed herein. Failure to comply with the intent of these standards and guidelines may constitute grounds for disapproval of the RD.

#### **(H) RECREATIONAL AREAS**

**(1) Design and Location** The Recreational Systems shall be designed to accomplish the following objectives:

**(a)** To maintain as much land as possible in its natural state, or in an attractive, landscaped manner with emphasis on hardy flowers and shrubs, or for specific active or passive recreational purposes, and in large parcels that would not be possible in lot by lot ownership, with access guaranteed to all users of the development.

**(b)** To create buffers between residential and non-residential uses.

- (c) To distribute the Recreational Areas such that the entire development is unified functionally and visually by such space.
- (d) To provide Recreational Areas within easy access of all users. All parts of the system shall be appropriate to their functions as buffers, large natural areas, ponds and streams capable of harboring or sustaining compatible natural species, open fields, developed recreation areas or yards for buildings. Such characteristics as area, breadth, and nature of foliage shall be considered by the Planning Board in determining whether the Recreational Areas satisfy the standards and intent of the RD.

**(2) Ownership and Maintenance** The plans and documentation submitted to the Planning Board shall include a description of all Recreational Areas as Follows:

- (a) **Plans** The plans and/or any supporting documents shall show the exact location, size, specific character and general use of all Recreational Areas.
- (b) **Dedication to Town** The Town may at any time accept the dedication of any of said land, facilities, or any interest therein for public use, benefit or maintenance, but the dedication of public use shall not be required as a condition for approval of the RD. If the Town Meeting fails to accept the offered land within two (2) years of the receipt of the offer, then the offer shall use another method identified herein for guaranteeing the Recreation Areas as approved by the Planning Board.
- (c) **Covenant** Any land or facilities designed as part of the Recreational system which are not dedicated to the Town shall be made subject to a covenant acceptable to the Planning Board, which covenant shall be recorded in the Worcester District Registry of Deeds, or the Worcester County Registry District of the Land Court, whichever is applicable, and shall run with said land in perpetuity. Said instrument shall prohibit further subdivision of such space or change of its use to any use not in keeping with the RD as approved without the approval of the Planning Board. Said instrument shall also prohibit denial of access to any part of said space by any occupant of the RD (although use may be conditioned on payment of a fee).
- (d) **Organization Owning Recreational Areas** Ownership of all or any portion of the Recreational Areas not dedicated to the Town shall be retained by a corporation or trust owned or to be owned by the owners of lots or units in the RD, subject to the following standards:
  - (i) The Town may enter upon said property at reasonable times for the purpose of inspection in order to insure compliance with the Special Permit.
  - (ii) Membership in said corporation or trust shall be automatic and shall pass with conveyances of the lots or units and be inseparable therefrom. The RD presentation shall include a complete description of said organization and the methods by which it shall be established and maintained, and the method by which fees and property taxes shall be collected and enforced. The presentation may provide that the property owners' association may lease back such land to the developer, his assigns, or to any other person or corporation, for operation and maintenance of the same.
  - (iii) Prior to the release of lots or units for sale or construction, the following documents are to be submitted to the Planning Board for approval:
    - (1) A sample Purchase and Sale Agreement which shall be used for the purchase of the individual lots and/or units. Said Agreement shall include in conspicuous type the following: that the property is part of a Recreational Development subject to Section 2.3.05 of the Zoning By-Laws of the Town of Leicester; that the purchaser and subsequent owners of the units are subject to the requirements therein contained; that the purchaser shall be required to be a member of a homeowner's association, shall be subject to rules and regulations of said association and shall be liable for any applicable assessment made by or against said association. The Purchase and Sale Agreement shall further contain a statement by the seller that the purchaser has been provided with a copy of the rules and regulations of the homeowner's association, copies of any proposed management policies, copies of restrictions or covenants running with the land in the development, and a prospectus which shall be a summarization in layman's language of the information contained in other documents.
    - (2) Copies of any documents or proposed documents creating the homeowner's association, the By-Laws and the rules and regulations of the homeowner's association, any management policies or proposed management policies, copies of any restrictions or covenants running with the land in the

development, and the prospectus which shall be a summarization in layman's language of the information contained in the filed documents. Said homeowner's association documents shall include a provision stating that, in the event of failure of a lot or unit owner to render to the association an established fee amount proportionate for its share of the reasonable and appropriate maintenance and property tax for the Recreational Areas, the association or the Town of Leicester may place a lien upon the lot or unit in order to assure payment, with said lien to include related legal expenses.

**(I) NON-RESIDENTIAL USES**

**(1) General Conditions** NR uses may be specifically authorized under the Special Permit as auxiliary supporting uses in the RD. Inadequate relation of such uses to the overall plan of the development, incompatibility with adjacent uses, insufficient buffer areas or undue traffic generation shall be sufficient grounds to deny any such use. Plans and other documents for NR uses should be submitted as an integral part of those submitted for the RD.

**(2) Public and Quasi-Public** Day care centers, public parks and community recreation center, Town buildings and uses and utilities as allowed may be permitted uses in RD's, subject to the prescribed standards and any conditions required by the Planning Board under the procedures for the RD.

**(J) ADMINISTRATION** In reviewing an RD proposal, the Planning Board shall be governed by the Special Permit procedures as specified in Section 6.4.02 of the Zoning By-Laws. For purposes of this RD section, the Planning Board is designated as the Special Permit Granting Authority. In addition, the Planning Board, as the Special Permit Authority for the RD Section, shall be governed by Massachusetts General Laws Chapter 40A, Section 9.



## SECTION 3: USE REGULATIONS

### 3.1 BASIC REQUIREMENTS

Except as provided in Section 1.4 of this by-law, no building or structure shall be constructed, and no building, structure or land or part thereof shall be used for any purpose or in any manner other than for one or more of the uses hereinafter set forth as permitted in the district in which such a building, structure or land is located, or set forth as permissible by Special Permit in said district and so authorized and in accordance with the following notation: Y – Use Permitted N – Use Prohibited SP – Use allowed by Special Permit. Except where specifically noted in Section 3.2 or elsewhere in the bylaw, the Special Permit Granting Authority for uses listed in Section 3.2 is the Zoning Board of Appeals in the SA, R1, R2, I, and BI-A districts and the Planning Board in the B, CB, HB-1, and HB-2 districts. Any use NOT listed is prohibited.

### 3.2 SCHEDULE OF USE

NOTE: See the following sections for permitted uses in the following districts:

District	Bylaw Section
BR-1	3.30
HB-2	3.31 & 3.32
RIB	3.32
HB-1	3.32
NB	5.6

<b>3.2.01 AGRICULTURE<sup>1</sup></b>		<b>SA</b>	<b>R1</b>	<b>R2</b>	<b>B</b>	<b>CB</b>	<b>I</b>	<b>BI-A</b>	<b>HB-1 &amp; HB-2</b>
1.	Farm, part-time farm or nursery, including the display and sale of natural products raised in the town, and raising of livestock the exception of swine as regulated in Section 3.2.01.3	Y	N	N	N	N	N	N	Y
2.	Raising of livestock for domestic use (See Section 5.17)	SP	SP	SP	SP	SP	SP	SP	SP
3.	Raising of swine and fur-bearing animals	SP	N	N	N	N	N	N	N
4.	Greenhouse	SP	N	N	N	N	N	SP	Y
5.	Backyard Chickens (See Section 5.17)	Y	Y	Y	Y	Y	Y	Y	Y

<sup>1</sup>The use of land for the primary purpose of commercial agriculture, aquaculture, silviculture, horticulture, floriculture, or viticulture as described under MGL Ch 40A, Section 3, on parcels over 5 acres, is permitted (Y).

<b>3.2.02 RESIDENTIAL</b>		<b>SA</b>	<b>R1</b>	<b>R2</b>	<b>B</b>	<b>CB</b>	<b>I</b>	<b>BI-A</b>	<b>HB-1 &amp; HB-2</b>
1.	Detached one-family dwelling	Y	Y	Y	N	N	Y	Y	N
2.	Two-family dwelling	N	N	SP	SP	SP	N	N	N
2-A.	Multi-family	N	N	N	SP	SP	N	N	N
3.	Renting of rooms or furnishing of board for not more than four persons in a dwelling regularly occupied for residential purposes.	Y	Y	Y	Y	Y	Y	Y	Y

<b>3.2.02 RESIDENTIAL</b>		<b>SA</b>	<b>R1</b>	<b>R2</b>	<b>B</b>	<b>CB</b>	<b>I</b>	<b>BI-A</b>	<b>HB-1 &amp; HB-2</b>
4.	Accessory uses customarily incidental to a permitted main use on the same premises, including, but not limited to the following: A. Use of a room or rooms in a dwelling for customary home occupations conducted by resident occupants, such as dressmaking, candy making or for the practice by the resident of a recognized profession.	Y	Y	Y	Y	Y	Y	Y	Y
	B. Use of a premises or building thereon in connection with his trade by a resident carpenter, electrician, painter, plumber or other artisan provided that no offensive noise, vibration, smoke, dust, odor, heat or glare is produced. Not more than one person other than residents of the premises is regularly employed in connection with the use. No stock in trade is regularly maintained except for products of the occupation itself or for goods or materials which are customarily stored, used or sold incidental to its performance. From the exterior of the building so used, there is not visible any display of goods or products, storage of materials or equipment, regular parking of commercial vehicles, or any other exterior indication that the premises are being utilized for any purpose other than residential, except for an accessory sign as hereinafter permitted.	Y	Y	Y	Y	Y	Y	Y	Y
5.	Accessory buildings, customarily incidental to the uses permitted on the same premises.	Y	Y	Y	Y	Y	Y	Y	Y
6.	Conversion of a one-family dwelling existing at the time of adoption of this by-law into a two-family dwelling, provided that the lot meets in full the intensity requirements for the district as outlined in Section 4.2 of this by-law and provided further that it can be demonstrated in each instance that no public health hazard is involved through inadequate provision for water supply or sewage disposal.	N	N	SP	SP	SP	N	N	N
7.	Family Child Care Home	Y	Y	Y	Y	Y	Y	Y	Y
8.	Child Care Facility	Y	Y	Y	Y	Y	Y	Y	Y
9.	Limited Frontage Lot in accordance with Section 1.3 Also needed SP for zone BR1	SP	SP	SP	N	N	N	N	N
10.	Senior Village Development (Special Permits issued by Planning Board)	SP	SP	SP	SP	N	N	SP	N
11.	Accessory Apartment	Y	Y	Y	N	N	N	Y	N
12.	Mixed-Use Development, Vertical Mix, 1-3 Units	N	N	N	Y	Y	N	N	N
13.	Mixed-Use Development, Vertical Mix, 4 Units or more	N	N	N	SP	SP	N	N	N
14.	Mixed-Use Development, Horizontal Mix	N	N	N	SP	SP	N	N	N

<b>3.2.03 BUSINESS</b>		<b>SA</b>	<b>R1</b>	<b>R2</b>	<b>B</b>	<b>CB</b>	<b>I</b>	<b>BI-A</b>	<b>HB-1 &amp; HB-2</b>
1.	Any wholesale or retail business, research laboratory, service or public utility not involving manufacturing on the premises except of products the major portion of which is sold on the premises by the producer to the consumer	N	N	N	Y	SP	Y	Y	Y
2.	Antique or gift shop, provided that the exterior of the building shall not be changed to look like a store, nor any new building be constructed to look like a store and provided that no merchandise shall be displayed outside the building.	Y	Y	Y	Y	SP	Y	Y	Y
3.	Place of amusement or assembly, club conducted for profit	SP	N	N	SP	SP	SP	SP	SP
4.	Office, bank, newspaper or job printing establishment.	N	N	N	Y	SP	Y	Y	Y
5.	Hotel or motel	N	N	N	Y	SP	Y	Y	Y
6.	Restaurant	SP	N	N	Y	SP	Y	Y	Y
7.	Gasoline station(prohibited in Watershed Overlay District	N	N	N	SP	N	N	N	SP
8.	Kennel, Commercial – Special Permits issued by the Planning Board.	SP	N	N	N	N	N	SP	SP
9.	Kennel, Private – Special Permits issued by Zoning Board of Appeals.	Y	SP	SP	Y	SP	Y	Y	Y
10.	Bed & Breakfast *in a pre-existing building	SP	SP	SP	Y	SP	N	N	Y*
11.	Drive-through facility (Special Permits issued by Planning Board)	N	N	N	SP	SP	SP	SP	SP
12.	Car Wash (Special Permits issued by Planning Board)	N	N	N	SP	N	SP	SP	SP
13.	Rental Enclosed Self-Storage Facility (outdoor storage prohibited) (Special Permits issued by Planning Board)	N	N	N	SP	SP	SP	SP	SP
14.	Contractor's Yard Not allowed (N) in NB, CB, and RIB. Allowed by-right (Y) in BR-1 and HB-2. (Special Permits issued by Planning Board. See also Section 3.2.08., Parking of Commercial Vehicles)	SP	N	N	SP	N	Y	Y	Y
15.	Veterinary Clinic	N	N	N	SP	SP	N	N	N
16.	Farmers' Market	Y	Y	Y	Y	Y	N	Y	Y
17.	Pet Grooming (Special Permits issued by Planning Board)	Y	SP	SP	Y	SP	Y	Y	Y
18.	Medical Marijuana Treatment Center (Planning Board Site Plan Review Required)	N	N	N	Y	N	Y	Y	Y
19.	Marijuana Retailer, Consumer Sales Only (Special Permits issued by the Planning Board)	N	N	N	SP	N	SP	SP	SP
20.	Marijuana Establishment, Non-Retail (Planning Board Site Plan Review Required)	N	N	N	Y	N	Y	Y	Y
21.	Marijuana Social Consumption Facility	N	N	N	N	N	N	N	N

<b>3.2.03 BUSINESS</b>		<b>SA</b>	<b>R1</b>	<b>R2</b>	<b>B</b>	<b>CB</b>	<b>I</b>	<b>BI-A</b>	<b>HB-1 &amp; HB-2</b>
22.	Vehicle Service or Repair Facility (prohibited in Watershed Overlay District)	N	N	N	SP	N	SP	SP	SP
23.	Vehicle Sales or Rental, up to 30 vehicles <sup>2</sup>	N	N	N	SP	N	Y	Y	Y
24.	Vehicle Sales or Rental/Auto Dealership, 30 or more vehicles <sup>2</sup>	N	N	N	N	N	SP	SP	SP
25.	Land and water recreational vehicle (including boats) sales, rental, service, and storage yards.	N	N	N	SP	N	SP	SP	SP
26.	Towing Company	N	N	N	SP	N	SP	SP	SP
27.	Vehicle Salvage Yard	N	N	N	N	N	N	N	N
28.	Brewery, Distillery, Winery	SP	N	N	SP	SP	Y	Y	Y
29.	Brew Pub	SP	N	N	Y	SP	Y	Y	Y

<sup>2</sup> Display/parking of vehicles for sale is prohibited in the right-of-way of any roadway (public or private) and in any required landscaped buffer areas for the applicable zoning district. Where the number of vehicles for sale combined with parking spaces exceeds twenty (20), Site Plan Review is required in accordance with Section 5.2 (Site Plan Review).

<b>3.2.04 INDUSTRIAL</b>		<b>SA</b>	<b>R1</b>	<b>R2</b>	<b>B</b>	<b>CB</b>	<b>I</b>	<b>BI-A</b>	<b>HB-1 &amp; HB-2</b>
1.	Any manufacturing or industrial use, including processing, fabrication and assembly, providing that no such use shall be permitted which would be detrimental or offensive or tend to reduce property values in the same or adjoining districts by reason of dirt, odor, fumes, smoke, gas, sewage, refuse, noise, excessive vibration or danger of explosion or fire.	N	N	N	N	N	Y	Y	Y
1-A	Research laboratory. (Same restrictions as above)	N	N	N	N	N	SP	SP	Y
2.	Construction headquarters or building from which construction work is directed and supplied.	N	N	N	N	N	Y	Y	Y
3.	Storage warehouse	N	N	N	SP	N	Y	Y	Y
4.	Earth Removal Operation (See Section 5.16)	SP	SP	SP	SP	N	SP	SP	N
5.	Earth Filling Operation (See Section 5.16)	SP	SP	SP	SP	SP	SP	SP	SP

<b>3.2.05 TRANSPORTATION, COMMUNICATION, UTILITY</b>		<b>SA</b>	<b>R1</b>	<b>R2</b>	<b>B</b>	<b>CB</b>	<b>I</b>	<b>BI-A</b>	<b>HB-1 &amp; HB-2</b>
1.	Aviation field	SP	N	N	N	N	N	N	N
2.	Radio or TV broadcasting and re- lay station	SP	N	N	N	N	N	N	SP
3.	Trucking depot	N	N	N	SP	N	SP	SP	SP
4.	Wireless Communication Also include SP for zones BR1 and RIB	SP	SP	SP	SP	SP	SP	SP	SP
5.	Large Wind Facility	SP	N	N	N	N	N	N	SP
6.	Small Wind Facility	SP	SP	SP	SP	SP	SP	SP	SP
7.	Large-Scale Ground-Mounted Solar Energy System	SP	N	N	SP	N	Y	Y	Y
8.	Medium-Scale Ground-Mounted Solar Energy System	SP	SP	SP	Y	N	Y	Y	Y
9.	Small-Scale Ground-Mounted Solar Energy System	Y	Y	Y	Y	Y	Y	Y	Y
10.	Taxi or Limousine Service	N	N	N	SP	N	Y	Y	Y

<b>3.2.06 PUBLIC, SEMI-PUBLIC INSTITUTIONAL</b>		<b>SA</b>	<b>R1</b>	<b>R2</b>	<b>B</b>	<b>CB</b>	<b>I</b>	<b>BI-A</b>	<b>HB-1 &amp; HB-2</b>
1.	Religious, educational or municipal use.	Y	Y	Y	Y	Y	Y	Y	Y
2.	Hospital, sanitarium, convalescent home	Y	Y	Y	Y	SP	Y	Y	SP
3.	Country club, golf course, boat livery, riding stable, or ski tow	SP	N	N	N	N	N	N	N
4.	Sporting and recreational camps	SP	SP	SP	SP	SP	SP	SP	SP
5.	Private club not conducted for profit	SP	SP	SP	SP	SP	SP	SP	SP

**3.2.07 SIGNS<sup>1</sup>****[Amended @ ATM 5-7-08]**

<sup>1</sup>All special permits for signs in all zoning districts are issued by the Zoning Board of Appeals. Signs in the HB-1 and HB-2 zoning districts shall follow the requirements of the Business (B) district.

<b>3.2.07 SIGNS<sup>1</sup> USE</b>		<b>BR-1</b>	<b>RIB</b>	<b>SA</b>	<b>R1</b>	<b>R2</b>	<b>B</b>	<b>I</b>	<b>BI-A</b>
<b>3.2.07-1</b> No sign shall contain any moving, flashing or animated lights or visible moving parts, indicators of time and/or temperature or automatically changing messages. *And upon recommendation by the Chief of Police		SP*	SP*	N	N	N	SP*	SP*	SP*
A.	Real-estate sign advertising rental, lease sale of premises on which sign is located or displaying name of builder, providing the sign does not exceed twelve (12) square feet in area.	Y	Y	Y	Y	Y	Y	Y	Y
B.	Sign incidental to permitted uses, provided that it does not exceed four (4) square feet in area.	Y	Y	Y	Y	Y	Y	Y	Y
C.	Neon or illuminated tube type signs or marquee signs. Where allowed by Special Permit, the lighting of any advertising shall be placed or hooded as to prevent direct light from shining onto any street or adjacent property.	SP	SP	N	N	N	SP	SP	SP

<b>3.2.07 SIGNS<sup>1</sup></b>		<b>USE</b>	<b>BR-1</b>	<b>RIB</b>	<b>SA</b>	<b>R1</b>	<b>R2</b>	<b>B</b>	<b>I</b>	<b>BI-A</b>
		<b>3.2.07-2</b> One standing sign or display for advertising goods or services available on the lot, provided no sign or display shall project nearer than one (1) foot from the lot line, or shall not have a gross exceeding thirty (30) square feet.	Y	Y	N	N	N	Y	Y	Y
A.	Increase up to fifty (50) square feet by Special Permit under Section 6.4.02 of this by-law.		SP	SP	N	N	N	SP	SP	SP
		<b>3.2.07-3</b> Wall sign (including awning signs) not to exceed 15% of the front perimeter wall.	Y	Y	N	N	N	Y	Y	Y
A.	Wall signs (including awning signs) on one other wall not to exceed 10% of wall area by Special Permit under Section 6.4.02		SP	SP	N	N	N	SP	SP	SP
		<b>3.2.07-4</b> Advertising sign not located on principal premises shall not exceed twelve (12) square feet in area, and shall not project nearer than one (1) foot from the lot line.	N	N	N	N	N	Y	Y	Y
		<b>3.2.07-5</b> Commercial billboards as regulated under Section 29-33, Chapter 93 of the General Laws	N	N	N	N	N	SP	SP	SP

### **3.2.08. PARKING OF COMMERCIAL VEHICLES**

**[New Bylaw accepted ATM 5-4-2009]**

#### **A. Commercial Vehicles Accessory to Principal Residential Use**

1. The continued and regular parking of one (1) commercial vehicle owned or operated by a resident of the premises is permitted by right in all zoning districts. Commercial vehicles in this bylaw do not include tractor trailers or construction vehicles (backhoes, bulldozers, dump trucks and the like), but shall include tractor trailer cabs. Nothing herein shall be construed to authorize a business at the location where such vehicles are parked. The commercial vehicle shall be parked in a driveway or in an enclosed structure.
2. Up to two (2) additional commercial vehicles as stated above accessory to a principal residential use may be allowed by special permit from the Planning Board, subject to the requirement that the vehicles are enclosed in a garage. The Planning Board may impose other conditions to protect abutting residential uses and the surrounding neighborhood.

#### **B. Other Parking of Commercial Vehicles**

1. Outdoor storage of commercial vehicles as a primary use is allowed by right in the HB-2 district, and requires a special permit in HB-1, I, BI-A, and BR-1 districts. This use is prohibited in all other zoning districts.
2. The continued and regular parking of commercial vehicles, tractor trailers, and construction vehicles (including but not limited to tractors, backhoes, bulldozers, dump trucks, etc.), where accessory to a lawfully permitted commercial use, is allowed by right in all commercial zoning districts (B, CB, I, BI-A, HB-1, HB-2, BR-1, and RIB).
3. Parking of commercial and construction vehicles (including but not limited to tractors, backhoes, bulldozers, dump trucks, etc) related to a Contractor's Yard where a special permit is required is subject to the requirement that such vehicles be stored in a garage in the Suburban Agriculture (SA) district, or screened by fencing or landscaping in the Business (B) district. The Planning Board may impose other conditions to protect abutting residential uses and the surrounding neighborhood.
4. The continued and regular parking of commercial vehicles, tractor trailers, or construction vehicles (including but not limited to tractors, backhoes, bulldozers, dump trucks, etc) accessory to a special-permitted commercial use in residential districts (SA, RA, and RB) will be addressed through the special permit process for the primary use. The Zoning Board of Appeals may impose reasonable conditions to protect abutting residential uses and the surrounding neighborhood.

#### **C. Other Requirements for Parking of Commercial Vehicles**

1. Parking and use of commercial vehicles related to the primary purpose of agricultural, horticulture, floriculture, or viticulture as described under MGL Ch.40A, Section 3 exempt under state law on parcels over 5 acres.
2. Operation, including idling, of construction vehicles where permitted in residential districts is prohibited between the hours of 11:00 PM and 6:00AM, except in case of emergency. The Planning Board may adjust this as needed to minimize negative impacts on abutting residential uses and the surrounding neighborhood through the special permit process.
3. Where a special permit is required, the Special Permit Granting Authority will use the special permit criteria for the applicable zoning district, and where there are none, the requirements of 6.4.02.3.

### Section 3.30: BUSINESS RESIDENTIAL-1(BR-1)ZONE

Single family residential uses permitted within this zone. Dimensional requirements per Section 4.2 Table 1. The Special Permit Granting Authority in the BR-1 District shall be the Planning Board.

**The Business uses permitted in this Zone are as follows:**

- a. Legal, accounting, consulting, architectural, engineering, surveying, real estate, insurance or similar professional office.
- b. Offices for agents for industrial, distributing and wholesale companies.
- c. Travel agency or office.
- d. Secretarial services, telephone answering service.
- e. Photocopying service.
- f. Photo studio; artist's, craftsman, locksmith's, or other artisan's studio.
- g. Florist, gift, stationery, or antiques shop.
- h. Repair and alteration of wearing apparel and accessories.
- i. Repair shop for musical instruments.
- j. Medical or dental office.
- k. Barber or beauty shop.
- l. Repair of household furnishings, including appliances and upholstery.
- m. Repair and rental of non-motorized bicycles.
- n. An inn or bed and breakfast establishment in a pre-existing building.
- o. Collection agency for utilities; pickup for laundry or dry cleaning.
- p. Child Care Facility and Family Child Care Home
- q. Store, showroom, salesroom for the conduct of retail business, including a grocery, hardware, clothing, drug, or general store, not including auto sales.
- r. Sales and distribution facilities. but not storage of toxic or virulent substances.
- s. Catering service, delicatessen or other food market or a permitted eating establishment.
- t. Farm stand for sales of natural produce and commercial greenhouse.
- u. Bank or equivalent financial institution, or automated teller facility.
- v. Restaurant.
- w. Shop and sales of supplies for plumbing, electrical, carpentry, cabinet making, plastering, masonry, glass, and similar work.
- x. Light manufacturing or light assembly (By Special Permit).
- y. A group of four or more commercial establishments planned, developed, and managed as a unit with off-street parking provided on the property.
- z. Sales or Rental, up to 30 vehicles (30 or more by special permit).
- aa. Enclosed storage facilities excepting hazardous materials or substances, hazardous waste, gas, oil or any substances or materials which poses a threat to human health or safety or a threat to the environment by Special Permit from the Planning Board.
- bb. Athletic/recreation facilities.
- cc. Establishments serving alcoholic beverages, including brew pubs, by special permit
- dd. Senior Village Developments by special permit from the Planning Board.
- ee. Accessory Apartment
- ff. Large Wind Facilities by Special Permit from the Planning Board.
- gg. Small Wind Facilities by Special Permit from the Planning Board
- hh. Veterinary Clinic by Special Permit from the Planning Board
- ii. Farmers' Market
- jj. Private Kennel by Special Permit from the Planning Board (Commercial Kennels prohibited).
- kk. Ground-Mounted Solar Energy Systems
- ll. Medical Marijuana Treatment Center, (Planning Board Site Plan Review Required, see Section 5.15).
- mm. Marijuana Establishment by special permit (See Section 5.15)
- nn. Backyard Chickens
- oo. Brewery, Distillery, Winery by special permit
- pp. Earth Removal Operation or Earth Filling Operation by special permit from the Planning Board (See Section 5.16)



### **Section 3.31: HIGHWAY BUSINESS-INDUSTRIAL DISTRICT2(HB-2)**

The Highway Business-Industrial District 2 (HB-2) shall comply with all requirements for the Highway Business-Industrial District 1 (HB-1), except that the minimum lot size for HB-2 shall be 45,000 square feet.

### **SECTION 3.32: RESIDENTIAL INDUSTRIAL BUSINESS ZONE (RIB) ZONE**

Dimensional requirements per Section 4.2 Table 1. The Special Permit Granting Authority in the RIB District shall be the Planning Board.

#### **A. Intent:**

It is the intent of this section to provide for residential uses in somewhat higher density than in other residential zones and to provide and increase the value of residential property situated in the vicinity of operating businesses, to protect the community from the detrimental effects of development not suited to location near residences, to protect persons and property against the hazards of pollution; to conserve natural conditions and open spaces; to separate and otherwise divide potentially conflicting property uses and to provide a harmonious relationship between residential and commercial development.

#### **B. Permitted Residential Uses Within This Zone Are:**

1. Detached one family dwelling subject to dimensional requirements set forth in Section 4.2 Table 1.
2. Two family dwelling by Special Permit. Subject to dimensional requirements set forth in Section 4.2 Table 1.
3. Multi-family (more than 2 family dwelling) - by Special Permit. Dimensions for residential use are set forth in Section 4.2 Table 1.
4. Permitted Business uses within this Zone are as follows:
  - a. Light manufacturing or light assembly facility limited to small scale assembly and manufacturing industries which are not injurious, noxious or offensive, or tend to reduce residential property values in the same or adjoining districts by reason of emission of odor, fumes, dust, smoke, vibration, sewerage, and/or industrial waste, noise, danger of explosion, fire or otherwise. Manufacturing allowed in this paragraph shall not include heavy industrial operations such as steel manufacturing, heavy forging presses and the like and shall be for utilizing hand labor or quiet machinery and process.
  - b. Landscaping services involving equipment purchasing.
  - c. Nursing home; extended or intermediate care facility licensed or approved to provide full time convalescent or chronic care.
  - d. Child Care Facility and Family Child Care Home.
  - e. The dimensional requirements for the business uses in this zone shall be the same as the BR-I Zone Section 4.2 Table 1.
  - f. Senior Village Developments are allowed by special permit from the Planning Board.
  - g. Accessory Apartment
  - h. Rental enclosed storage facilities by special permit issued by Planning Board.
  - i. Uses allowed in the HB-1 district under sections 3.2.03 , 3.2.04, 3.2.05, 3.2.06, and 3.33, only by special permit issued by the Planning Board. Uses prohibited under Section 3.33.3 are also prohibited in the RIB district.
  - j. Small Wind Facilities by Special Permit from the Planning Board.
  - k. Farmers' Market
  - l. Small-Scale and Medium-Scale Ground-Mounted Solar Energy Systems
  - m. Large-Scale Ground-Mounted Solar Energy Systems by Special permit from the Planning Board
  - n. Backyard Chickens
  - n. Vehicle Sales or Rental, up to 30 vehicles (30 more by special permit)
  - o. Taxi or Limousine Service

**C. Development within the RIB District** shall comply with Sections 5.5.02 through 5.5.04, except that the landscaped buffer specified in Section 5.5.02.2.C shall be 50 feet, rather than 100 feet At the discretion of the Planning Board, the width of the required fifty (50) foot landscaped buffers from an abutting residential use or district may be reduced to a minimum of twenty (20) feet where site constraints do not allow for the 50-foot buffer and an opaque fence is provided to provide screening from the abutting residential use or district.

### **SECTION 3.33: ADDITIONAL USE REGULATIONS SPECIFIC TO THE HIGHWAY BUSINESS-INDUSTRIAL DISTRICT-1(HB-1)**

In addition to Section 3.2, SCHEDULE OF USE REGULATIONS, the HB-1 District shall also be regulated as follows:

#### **3.33.1 Additional Permitted Uses (Y)**

1. Business and Professional Offices
2. Medical Offices
3. Consumer service establishments (dry cleaner, beauty salon, etc.)
4. Lumber and building material establishments
5. Miniature golf establishments

#### **3.33.2 Additional Uses allowed by Special Permit (SP)**

1. Movie Theaters
2. Veterinary Hospitals

#### **3.33.3 Prohibited Uses (N)**

1. Any use not expressly permitted in Section 3.2 and 3.33.
2. Cemeteries
3. Tanneries
4. Meatpacking
5. Slaughterhouses
6. Hazardous material processing

### **SECTION 3.34 CENTRAL BUSINESS DISTRICT (CB)**

#### **A. Purpose & Intent**

The purpose of the Central Business District is to encourage development and redevelopment of Leicester Center while preserving the area's pedestrian-oriented characteristics, mixed uses, and existing structures of historical significance. New construction should complement the existing historical nature of the Central Business District. Projects which interrupt the continuity of pedestrian circulation, require large expanses of land, or involve demolition of historic structures are discouraged. The requirement for a special permit for most commercial development in this district is intended to allow the Town to address the unique character of Leicester Center and is not intended to discourage commercial development in general.

#### **B. Central Business District Requirements**

The Central Business District shall comply with Business District Site Development Standards (Section 5.8). The Planning Board shall be the special permit granting authority for all special permits in the CB district.

## SECTION 4: DIMENSIONAL REQUIREMENTS

### 4.1 BASIC REQUIREMENTS

No building or structure erected in any district shall be located on a lot having less than the minimum requirements set forth in Table I and II. No more than one dwelling shall be built upon such lot, except where specifically allowed elsewhere in the Zoning Bylaws. In the BR-1 and RIB districts a lot may contain a single dwelling unit in addition to a commercial structure on the same lot. No existing lot shall be changed as to size or shape so as to result in the violation of the requirements set forth in Table I and II.

### 4.2, SCHEDULE OF DIMENSIONAL REQUIREMENTS – TABLE I

District	Minimum Area (SQ. FT)	Frontage (FT)	Front (FT)	Side (FT)	Rear (FT)	Max height of building in feet <sup>1</sup>	No. of stories	Maximum Building Coverage (%)
R1	50,000 <sup>2</sup>	150	25	15	25	35	2½	30
R2	20,000	125	25	15	25	35	2½	30
SA	80,000	200	40	40	40	35	2½	30
B	15,000 <sup>3</sup>	100	25	10	25	35	2½	30
CB	15,000 <sup>3</sup>	100	10	10	25	35	2½	30
BI-A single family	30,000	175	40	40	40	55	5½	30
BI-A structure	20,000	150	50	40	40	55	5½	30
BR-1 single family	50,000	200	40	40	40	55	5½	30
BR-1 structure	20,000	150	50	40	40	55	5½	30
I single family	40,000	150	50	40	40	55	5½	30
I structure	10,000	100	25	10	25	55	5½	50
RIB single family	30,000	175	40	40	40	55	5½	33
RIB Two family	30,000	175	25	25	25	55	5½	33
RIB Multi-family	30,000	250	25	15	25	55	5½	33
RIB Multi-family Each add'l apt up to and include 5	10,000	250	25	15	25	55	5½	33
RIB Multi-family Each add'l apt after 5th apt.	2,500	250	25	15	25	55	5½	33
HB-1	60,000	200	50	50	50	55	5½	40
HB-2	45,000	200	50	50	50	55	5½	40
NB	20,000	100	25 <sup>4</sup>	15	25	25	2	40

<sup>1</sup> No building over 35 feet in height shall be used for habitation (See Section 4.2.06)

<sup>2</sup> The minimum lot size in the R1 district shall be 40,000 square feet for lots served by public water and sewer.

<sup>3</sup> See also Table II

<sup>4</sup> In Neighborhood Business Districts (NB), if the alignment of existing principal buildings on adjacent lots on each side of a lot fronting the same street in the same district is nearer to the street line than the required front setback, the average of the existing alignments of all such buildings within 500 feet of said lot shall be the required front setback.

**SCHEDULE OF DIMENSIONAL REQUIRMENTS – TABLE II\***

District	Minimum Area (SQ. FT)	Frontage (FT)	Front (FT)	Side (FT)	Rear (FT)	Max height of building in feet <sup>1</sup>	No. of stories	Maximum Building Coverage (%)
<u>B &amp; CB</u> Multi-family, 1st apt	15,000	100	25	15	25	35	2½	30
<u>B &amp; CB</u> Multi-family, each additional apt. up to & including 5	7,500	100	25	15	25	35	2½	33
<u>B &amp; CB</u> Multi-family, each additional apt. after 5th apt.	2,000	100	25	15	25	35	2½	30

\*The requirements of Section 4, Table II shall apply to Mixed-Use Developments, except as follows:

- a. Mixed-use developments with a single dwelling unit proposed in buildings in existence prior to the adoption of this Section of the Leicester Zoning Bylaw are exempt from the dimensional requirements of Section 4.
- b. The Planning Board, by special permit, may waive or modify dimensional controls set forth in Section 4 for Mixed-use developments that are proposed in buildings or structures in existence as of the date of the adoption of this section of the Leicester Zoning Bylaw.

**4.2.01** A lot or parcel of land having an area or a frontage of lesser amounts than required by this table may be considered as coming within the area and frontage requirements of this section, provided such lot or parcel of land was shown on a plan or described in a deed duly recorded or registered at the time of the adoption of this by-law and did not at the time of such adoption adjoin other land of the same owner available for use in connection with such lot or parcel.

**4.2.02** To be measured at right angles to the principal structure. Measurement is from the right-of-way line where a plan of the way is on file with the Registry of Deeds or, in the absence of such a plan, from a line 25 feet from and parallel with the center line of the traveled way.

**4.2.03** The limitations on height of buildings shall not apply in any district to chimneys, ventilators, towers, spires, roof-mounted solar energy systems, or other ornamental features of buildings which features are in no way used for living purposes.

**4.2.04** Side yard dimension will be fifty (50) feet when adjacent to a Residential District or a Suburban-Agricultural District. This requirement shall not apply to the CB district.

**4.2.05** Rear yard dimension will be fifty (50) feet when adjacent to a Residential District or a Suburban-Agricultural District. This requirement shall not apply to the CB district.

**4.2.06** Height Restriction for Habitation. No building over 35 feet in height shall be used for human or animal habitation.

### **4.3 MODIFICATIONS TO DIMENSIONAL REQUIREMENT**

**4.3.01** No existing lot shall be changed as to size or shape so as to result in the violation of the requirements set forth in Section 4.2.

**4.3.02** Upon granting of a Special Permit by the Planning Board, the dimensional requirements of this bylaw shall not apply to any uninhabited structures for public utilities owned by the Town of Leicester or Municipalities within the Town.

### **Section 4.4**

A lot in the BR-1, and RIB Zones shall not contain more than two-third (2/3) impervious area and not less than 1/3 for greenery. The greenery must extend 20' from boundary of lot. All business and/or multiple family uses set forth in the BR-1, and RIB Zones shall be subject to the Site Plan Review By-Law.

## SECTION 5: SPECIAL REGULATIONS

### 5.1 PARKING AND LOADING REQUIREMENTS

**[Amended STM 11/14/2017, Article 11]**

- 5.1.01** No use of land for either residential or non-residential purposes in any district in the Town will be permitted which does not provide off-street parking and loading and unloading space adequate for its customary needs.
- 5.1.02** The Planning Board is authorized to adopt from time to time Parking Regulations to regulate parking and to define adequacy for off-street parking and loading and unloading space for residential and non-residential use
- 5.1.03** Parking shall be located on the same lot as the principal use or on a contiguous lot within the same zoning district or in an adjacent zoning district in which such parking is permitted provided that no space is counted as meeting the requirements for more than one building or use except in accordance with the shared parking requirements in the Planning Board's Parking Regulations.
- 5.1.04** In the Business (B) and Central Business (CB) districts all parking shall be provided on the same lot as the principal use or on another lot within a radius of 300 feet in the same zoning district or in an adjacent zoning district in which such parking is permitted provided that such parking is located on a lot on the same side of a major road (e.g. Route 9, Pleasant Street, Stafford Street) as the principal use and that no space is counted as meeting the requirements of more than one building or use except in accordance with the shared parking requirements in the Planning Board's Parking Regulations. Properties within the CB District shall not be required to comply with the 300 foot limitation and may share parking anywhere within the CB District on the same side of a major road. By Special Permit, the Planning Board may allow parking on the opposite side of the road in the CB district.

### 5.2 SITE PLAN REVIEW

#### 5.2.01 PURPOSE.

The purpose of this Section is to provide for a comprehensive review of site plans for those uses and structures that may have a significant impact on the Town's character, infrastructure, environment and quality of life.

#### 5.2.02 APPLICABILITY

##### 1. Projects Requiring Site Plan Review:

Site Plan Review by the Planning Board shall be required in all zoning districts prior to the issuance of a Building Permit, except as exempted below, for the following:

- a. Any new use, or any expansion of an existing use, that results in 3,000 square feet of new floor area, addition or creation of more than 20 parking spaces, or 10,000 square feet of new land area devoted to a use
- b. Addition or creation of a drive-in or drive-through establishment
- c. Any building over 35 feet in height
- d. Radio or TV broadcasting towers and any structure meeting the definition of a wireless communication facility or large wind facility.
- e. All non-residential projects in the Greenville Village Neighborhood Business District (NB) per Section 5.6.02.2 of the Zoning Bylaw
- f. All business and/or multiple family uses set forth in the BR-1, and RIB Zones per Section 4.4 of the Zoning Bylaw.
- g. Medium-Scale Ground-Mounted Solar Energy Systems that occupy 3,000 square feet or more of surface area and Large-Scale Ground-Mounted Solar Energy Systems.
- h. Medical Marijuana Treatment Centers and Marijuana Establishments

##### 2. EXEMPTIONS:

Site Plan Review shall not be required for the construction or enlargement of any single-family or two-family dwellings, the construction or alteration of any structure to be used exclusively for agricultural purposes, or for any public buildings or uses of the Town of Leicester.

### 3. WAIVERS

When a Special Permit or Site Plan application is for a new use, but involves the reuse, alteration or reconstruction of an existing structure, the Board may waive the submittal of technical information, plans, or documents otherwise required hereunder when in the opinion of the Board said alteration or reconstruction does not substantially change the relationship of the structure to the site and to abutting properties and structures. Upon application as specified in the Site Plan Review Rules & Regulations, such a determination may be made by majority vote of the Board. The involved structure shall be as shown on a site plan previously approved under this Section or on a plan determined by the Planning Board to be sufficient to evaluate the proposed project. Such plan, with all proposed changes shown, shall be included with the application. This waiver provision shall not apply to applications for Adaptive Re- use Developments.

#### 5.2.03 SITE PLAN REVIEW PROCEDURE:

##### 1. FILING.

An applicant for site plan review shall file in accordance with the Planning Board's Site Plan Review Rules & Regulations.

##### 2. PLAN REVIEW:

The Planning Board shall refer copies of the site plan application to the Boards and Departments specified in the Board's Sites Plan Review Rules & Regulations. These parties shall have thirty-five (35) days in which to review and comment on the plan. Failure to submit written comments within thirty-five days shall be interpreted as lack of opposition to the approval of the site plan. The Planning Board shall not make a finding and determination upon an application until it has received these recommendations or until thirty-five have elapsed without such recommendation being submitted.

##### 3. PLAN REVIEW:

The Planning Board is authorized to retain a professional engineer, architect, landscape architect or other professional consultant to advise the Board on any and all aspects of the site plan. The Planning Board shall adopt, after a public hearing, and may later amend, a fee schedule which accurately reflects the cost of reviewing such plans. The site plan review fee must be paid by the applicant at the time of the plan submission.

##### 4. DECISION:

- A. Standard Site Review Applications:** The Planning Board shall deliver its written decision to the Town Clerk and Building Inspector within sixty (60)) days of the receipt of the site plan application. This time limit may be extended by written agreement between the applicant and the Planning Board. Failure of the Planning Board to take final action within sixty (60) days, or extended time, shall be deemed to be approval of the application
- B. Major Site Plan Review Applications:** Site Plan Review applications for projects involving new construction or expansion of more than 30,000 square feet of gross floor area, Large-Scale Ground-Mounted Solar Energy Systems that occupy 240,000 square feet (5.5 acres) or more of surface area or Ground-Mounted Solar Energy Systems that involve more than two (2) acres of tree clearing shall require a Planning Board public hearing. Such public hearing shall follow the procedures of MGL, Ch.40A regarding special permits with regard to scheduling, notification, and deadline for a decision. The public hearing shall be scheduled within sixty-five (65) days after the application has been submitted to the Planning Board. Failure of the Planning Board to take final action within ninety (90) days of the close of the public hearing shall be deemed to be approval of the application. These time limits may be extended by written agreement between the applicant and the Planning Board in accordance with the Site Plan Review Rules and Regulations.
- C. Final Action.** The Planning Board's final action shall consist of either:
  - 1. Approval of the site plan based upon a determination that the plan is in compliance with the standards set forth in this By-Law;
  - 2. Disapproval of the site plan based upon determination that the proposed project does not meet the standards set forth in this By-Law; in the event of disapproval, the Board shall state the reasons why the plan was not approved and identify the specific corrective measures that must be taken to bring the plan into compliance with the standards; or
  - 3. Approval of the site plan subject to any conditions, modifications and restrictions as required by the Planning Board which will ensure that the plan meets these standards.

#### 5.2.04 SITE PLANS ALSO REQUIRING A SPECIAL PERMIT:

In cases where a development requires site plan review by the Planning Board and a Special Permit from the Board of Appeals for the same project, the applicant shall file site plan and special permit applications



concurrently with the appropriate Board. This requirement shall not apply to special permits for signs. The Planning Board shall review the site plan, and shall submit a report with recommendations to the Board of Appeals within forty-five (45) days of the receipt of the application. The Board of Appeals shall incorporate the Planning Board's recommendations and conditions in its Special Permit decision, or shall state in the decision the reasons why such recommendations or conditions were not followed. In cases where a development requires site plan review and a special permit from the Planning Board, the applicant shall file site plan and special permit applications, along with application and public hearing fees, concurrently with the Planning Board. Where applicable, a combined hearing may be held for Planning Board special permit and site plan review applications for the same project.

#### **5.2.05 STANDARDS FOR SITE PLAN APPROVAL:**

The Planning Board shall approve a site plan when the following standards are met:

- A.** The use complies with all the provisions of the Leicester Zoning By-Law;
- B.** The use will not materially endanger or constitute a hazard to the public health and safety;
- C.** The use will not create undue traffic congestion or unduly impair pedestrian safety;
- D.** Sufficient off-street parking exists or will be provided to serve the use;
- E.** The use can be adequately served by water, sewer, and other necessary utilities, or if these are unavailable, that they will be brought to the site at the owner's expense; or, the Planning Board is satisfied that the proposed alternatives will comply with all applicable regulations; and,
- F.** The use will not result in a substantial increase of volume or rate of surface water runoff to neighboring properties and streets, nor will result in pollution or degradation to surface water or groundwater;
- G.** The use will not result in any undue disturbance to adjoining property owners or the Town caused by excessive or unreasonable noise, smoke, vapors, fumes, dust, glare, etc.

#### **5.2.06 SITE PLAN CONDITIONS:**

The Planning Board may impose conditions, safeguards and limitations on time and use as may be appropriate for the protection of the natural environment, the neighborhood, and the Town. Such conditions shall be imposed in writing on the site plan approval and shall be enforced by the Building Inspector. The applicant may be required to post a bond or other security in an amount satisfactory to the Planning Board for compliance with these conditions. The procedure for reducing or releasing the security shall be the same as those in the Planning Board's Subdivision Rules and Regulations.

#### **5.2.07 TIME LIMITATIONS:**

Construction on a site must be started or substantial activity commenced within one (1) year of the date of the site plan approval. This time may be extended for one additional year at the discretion of the Planning Board, for good cause, and upon a written request from the applicant prior to the expiration of the original one-year period. Construction, once begun, shall be actively and continuously pursued to completion within a reasonable time. The Planning Board shall include in its decision a deadline to complete construction under an approved site plan, such time not to exceed 2 years from the date of approval, except for Senior Village Developments, which shall have up to 5 years. Such time may be extended for good cause upon the written request of the applicant prior to the specified deadline. If the time period for commencement or completion has elapsed, the rights granted by the site plan approval shall expire and may be reestablished only after another site plan review under this Section.

#### **5.2.08 MODIFICATIONS**

- A.** Modifications of Site Plans shall follow the same procedures as the original submittal, except that the Planning Board, where it is not otherwise inconsistent with this Section or with the Town's Zoning Bylaws, may approve minor engineering changes to a previously approved site plan in accordance with the Site Plan Review Rules and Regulations.
- B.** The Planning Board, acting through its Chair and professional staff, may approve insignificant changes to an approved site plan in accordance with the Site Plan Review Rules and Regulations.

## SECTION 5.2.09 FLOOD PLAIN DISTRICT (formerly 5.2.04)

[Amended @ ATM 5-7-2008]

### I. PURPOSE

A. The purposes of the Flood plain District are to:

1. Ensure public Safety through reducing the threats to life and personal injury;
2. Eliminate new hazards to emergency response officials;
3. Prevent the occurrence of public emergencies resulting from water quality, contamination, and pollution due to flooding;
4. Avoid the loss of utility service which if damaged by flooding would disrupt or shut down the utility network and impact regions of the community beyond the site of flooding;
5. Eliminate costs associated with the response and cleanup of flooding conditions; and
6. Reduce damage to public and private property resulting from flooding waters.

### II. DEFINITIONS

**BASE FLOOD:** the flood having a one percent chance of being equaled or exceeded in any given year.

**DEVELOPMENT:** any manmade change to improved or unimproved real estate, including but not limited to building or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations.

**FEDERAL EMERGENCY MANAGEMENT AGENCY (FEMA):** administers the National Flood Insurance Program (NFIP). FEMA provides a nationwide flood hazard area mapping study program for communities as well as regulatory standards for development in the flood hazard areas.

**FLOOD BOUNDARY AND FLOODWAY MAP:** and official map of a community issued by FEMA that depicts, based on detailed analyses, the boundaries of the 100-year and 500-year floods and the 100-year floodway.

**FLOOD INSURANCE RATE MAP (FIRM):** an official map of a community in which FEMA has delineated both the areas of special flood hazard and the risk premium zones applicable to the community.

**FLOOD INSURANCE STUDY:** and examination, evaluation, and determination of flood hazards, and if appropriate, corresponding water surface elevations, or an examination, evaluation and determination of flood-related erosion hazards.

**FLOODWAY:** the channel or river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation.

**NEW CONSTRUCTION:** for floodplain management purposes, structures for which the “start of construction” commenced on or after the effective date of a floodplain management regulation adopted by a community.

**SPECIAL FLOOD HAZARD AREA:** means an area having special flood and/or flood-related erosion hazards, and shown on a Flood Hazard Boundary Map or FIRM as Zone A, AO, A1-30, A99, AH, V, V1-30, VE.

**START OF CONSTRUCTION:** includes substantial improvement, and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition, placement, or other improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, or floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

**STRUCTURE:** for floodplain management purposes, a walled and roofed building, including a gas or liquid storage tank, that is principally above ground, as well as a manufactured home.

**SUBSTANTIAL DAMAGE:** damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.



**SUBSTANTIAL IMPROVEMENT:** any reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure before the “start of construction” of the improvement. This term includes structures that have incurred substantial damage, regardless of the actual repair work performed.

**ZONE A:** the 100-year floodplain where the base flood elevation (BFE) has not been determined. To determine the BFE, use the best available federal, state, local or other data.

**ZONE A1-A30:** The 100-year floodplain where the base flood elevation has been determined.

### III. FLOOD PLAIN DISTRICT

**A. ESTABLISHMENT OF FLOOD PLAIN DISTRICT.** The Flood Plain District is herein established as an overlay district. The Flood Plain District includes all special flood hazard areas within the Town of Leicester designated as Zones A and AE, on the Worcester County Flood Insurance Rate Map (FIRM) issued by the Federal Emergency Management Agency (FEMA) for the administration of the National Flood Insurance Program. The map panels of the Worcester County FIRM that are wholly or partially within the Town of Leicester are panel numbers 25027C0590E, 25027C0595E, 25027C0613E, 25027C0780E, 25027C0781E, 25027C0782E, 25027C0783E, 25027C0784E, 25027C0801E and 25027C0803E dated July 4, 2011.

The exact boundaries of the Flood Plain District may be defined by the 100-year base flood elevations shown on the FIRM and further defined by the Worcester County Flood Insurance Study (FIS) report dated July 4, 2011. The FIRM and FIS report are incorporated herein by reference and are on file with the Town Clerk and Building Inspector. All development in the district, including structural and non-structural activities, whether permitted by right or by special permit must be in compliance with Chapter 131, Section 40 of the Massachusetts General Laws and with the following:

- Section of the Massachusetts State Building Code which addresses floodplain and coastal high hazard areas (currently 780 CMR 120.G, "Flood Resistant Construction and Construction in Coastal Dunes");
- Wetlands Protection Regulations, Department of Environmental Protection (DEP) (currently 310 CMR 10.00);
- Inland Wetlands Restriction, DEP (currently 310 CMR 13.00);
- Minimum Requirements for the Subsurface Disposal of Sanitary Sewage, DEP (currently 310 CMR 15, Title 5);

Any variances from the provisions and requirements of the above referenced state regulations may only be granted in accordance with the required variance procedures of these state regulations.

**B. BASE FLOOD ELEVATION AND FLOODWAY DATA** Base flood elevation data is required for subdivision proposals or other developments greater than 50 lots or 5 acres, whichever is the lesser, within unnumbered A zones.

**C. NOTIFICATION OF WATERCOURSE ALTERATION** In a riverine situation, the following parties shall be notified of any alteration or relocation of a watercourse: adjacent communities, NFIP State Coordinator, Massachusetts Office of Water Resources, and NFIP Program Specialist, FEMA Region I.

**SUBDIVISIONS IN FLOODPLAIN DISTRICT** Subdivision proposals shall be reviewed to assure that: a) such proposals minimize flood damage; b) all public utilities and facilities are located and constructed to minimize or eliminate flood damage; and c) adequate drainage is provided to reduce exposure to flood hazards.

### IV. DEVELOPMENT REGULATIONS

The following requirements apply in the Flood Plain District:

**A.** Within Zone A, where the base flood elevation is not provided on the firm, the applicant shall obtain any existing base flood elevation data and it shall be reviewed by the Building Inspector for its reasonable utilization toward meeting the elevation or flood proofing requirements, as appropriate, of the State Building Code.

**B.** In the floodway, designated on the flood boundary and floodway map, the following provisions shall apply:

1. All encroachments, including fill, new construction, substantial improvements to existing structures, and other development are prohibited unless certification by a registered professional engineer is

provided by the applicant demonstrating that such encroachment shall not result in any increase in flood levels during the occurrence of the 100-year flood.

2. Any encroachment meeting the above standards shall comply with the floodplain requirement of the State Building Code.

**C. FLOODWAY DATA** In Zones A and AE, along watercourses that have not had a regulatory floodway designated, the best available Federal, State, local, or other floodway data shall be used to prohibit encroachments in floodways which would result in any increase in flood levels within the community during the occurrence of the base flood discharge.

### **5.3 USES PROHIBITED IN ALL DISTRICTS**

**5.3.01** Dumping of other than clean fill. Dumping of refuse, contaminated or combustible materials except as a municipal function. See definition of Clean Fill (Section 1.3) and Section 5.16 (Earth Filling & Removal).

**5.3.02** The keeping of a trailer on any lot within the Town for the use as a dwelling, except during the construction of a residence on the property and then with a time limit of one (1) year. This time may be extended for one (1) year periods under conditions by Special Permit, Section 6.4.02.

**5.3.03** A cellar hole dwelling.

**5.3.04** The stripping and removal of topsoil for use outside of the Town of Leicester boundaries. See Section 5.16 (Earth Filling & Removal)

## SECTION 5.4 “WIRELESS COMMUNICATION BYLAW”

(New bylaw ATM 5/98)

**Purpose** - The purpose of these regulations include minimizing adverse impacts of wireless communication facilities on adjacent properties, historic areas and residential neighborhoods, minimize the overall number and height of such facilities to only what is essential, to encourage co-location on a single structure, and avoid damage to adjacent properties from facility failure through engineering and careful siting of facilities.

**Definitions** - A “wireless communication facility” shall mean transmitters, structures (including but not limited to towers) and other types of installations including but not limited to antennae and accessory structures used for the provisions of wireless services, including but not limited to all commercial mobile services. This section does not apply to “direct to home” satellite services or other similar antennae which are no greater than six feet in diameter. A wireless communication facility may be allowed in zoning districts as specified under SECTION 3.2.05 upon the issuance of a special permit by the Zoning Board of Appeals. The special permit may be issued upon the following terms and conditions:

**Submittal Requirements** - In addition to the submittal requirements of the site plan review under section 5.2 of the zoning bylaw, the following items are required to be submitted at the time of application:

- The number and type of antennae proposed.
- A description of the proposed antenna and all related fixtures, structures, and apparatus, including height, material, color and lighting.
- A description of proposed antenna function and purpose.
- Direction of maximum lobes.
- An evaluation of the feasibility of attaching the proposed facility to existing buildings or utilizing existing facilities for the proposed facility.
- Copies of all applicable permits including but not limited to all State and Federal permits required for this project and a certification of compliance with the terms and provision of the license issued for this purpose by the Federal Communications Commission.
- Site Justification Statement including a description of the narrowing process that eliminated other potential sites.
- A fall zone analysis will be conducted by a registered, professional engineer

### General Requirements:

- A tower shall be of monopole or similarly unimposing design. The applicant shall successfully demonstrate to the satisfaction of the Board that the proposed facility will have minimal visual impact and constructed so it is reasonably capable of accommodating other users including other wireless communication companies and local police, fire and ambulance companies unless it is determined to be technically infeasible based on the Board’s evaluation of information submitted.
- No interference to existing television, cable television or radio signals including emergency systems and public safety communication shall be permitted from the tower or components thereon. If interference occurs, it shall be the responsibility of the site owner to immediately remedy it.
- Unless otherwise required by the Federal Communication Commission or the Federal Aviation Administration, towers shall be painted a non-contrasting color or camouflaged with some other treatment deemed acceptable by the Board.
- No advertising or signage, except no trespassing signs, shall be permitted on the facility.
- A security fence of at least 6 feet in height shall be placed around the base of the facility to control access.
- Night lighting of towers shall be prohibited unless required by the Federal Aviation Administration.
- Structures shall be removed within one year of cessation of use. Town of Leicester fire, police and emergency companies such as ambulance has the right to take over use of tower after abandonment by owner.

Prior to the issuance of a building permit for wireless communication usage, the applicant shall post and submit a bond or other financial surety acceptable to the Town in an amount sufficient to cover the cost of demolishing and/or removing the facility in the event the Building Inspector condemns the property or deems it to have been

abandoned or vacant for more than one year. The amount of the bond shall be certified by an engineer, architect or other qualified professional. In the event the bond amount does not cover the cost of removal, the Town may place a lien upon the property covering the difference in cost according to statute.

The Zoning Board of Appeals may modify any provision of the forgoing standards and conditions when in the Zoning Board's discretion it is technically infeasible to meet the standards or conditions or when the strict adherence to the standards and conditions impedes the legitimate purposes of this Bylaw.

The Zoning Board of Appeals shall be the permit granting authority herein and may from time to time adopt such further regulations and interpretive statements and policies as to promote the legitimate purposes of this Bylaw. Such regulations, policies, statements and interpretive statements shall be in writing and be adopted by the Planning Board consistent with general law.

## 5.5 HIGHWAY BUSINESS-INDUSTRIAL DISTRICT 1 (HB-1)

### 5.5.01 Purpose and Intent

To provide for the development and redevelopment of Leicester's highway business corridors by allowing a mix of commercial, office, research, and light industrial activities that create employment opportunities and expand the tax base, while protecting existing development, conserving natural resources, and protecting and enhancing the environment.

### 5.5.02 Site Development Standards

All non-residential use, or conversion to a non-residential use, within the HB-1 district shall comply with all Site Development Standards in Sections 5.5.02.1 through 5.5.02.3 described below:

#### 5.5.02.1 Parking, Loading Areas, and Access

Non-residential uses within the HB-1 Zone shall provide parking and loading facilities in compliance with Section 5.1, PARKING AND LOADING AND UNLOADING SPACE, and the following additional requirements:

##### A. General Requirements for Parking and Loading Areas

1. Parking facilities sufficient to accommodate the motor vehicles of all employees, customers and other persons normally visiting the site at any time shall be provided on the lot and off the street.
2. All parking and loading areas shall be located to the rear of the required front setback, as defined in Section 4.2.
3. All parking shall be provided on the same lot with the principal use or on a contiguous lot within the same zoning district, provided that no space is counted as meeting the requirements of more than one building or use.
4. To the maximum extent feasible, parking and loading areas shall be located to the side or rear of the primary structure.
5. Adequate turning and maneuvering space shall be provided for loading areas, without encroachment into parking areas.
6. Adequate illumination shall be provided for the comfort and safety of persons using parking and loading areas.
7. Parking and loading area lighting shall not shine beyond the property lines, except for driveway entrances where light may shine onto the immediate area of the street right-of-way.
8. Provision for safe and convenient pedestrian access shall be incorporated into plans for new parking areas.

##### B. Minimum Parking Space Requirements

1. A minimum of two hundred (200) square feet (10' x 20'), exclusive of drives and other access ways, shall be considered one (1) off-street parking space.
2. In determining the appropriate number of parking spaces required, the Planning Board may give consideration to the hours of usage of the proposed use/structure, the opinions of municipal officials and consultants as to the adequacy or inadequacy of parking spaces within the specific area of the proposed use/structure, as well as other relevant information to assist the Planning Board in determining the need for additional parking for motor vehicles.
3. Parking areas serving all non-residential structures shall be hard-paved.
4. Parking areas shall include handicap accessible parking spaces as required by 521 CMR, Architectural Access Board Code, as may be amended from time to time.

##### C. Access & Driveway Requirements

Non-residential uses within the HB-1 Zone shall provide driveways in compliance with Section 6.2A, DRIVEWAY BY-LAW, and the following additional provisions:

1. To limit the number of curb cuts in the street right-of-way, shared driveways serving more than one lot are permitted, and strongly encouraged, in the HB-1 district. To the maximum extent feasible, only one (1) curb cut shall serve each lot. No more than two (2) curb cuts shall be permitted per lot, or per establishment if on more than one lot. Curb cuts abutting residential properties shall be at least twenty-four (24) feet from abutting properties.

2. All driveways serving any non-residential use must be at least twenty (20) feet wide where separate access and egress driveways are provided; all driveways must be at least twenty-five (25) feet wide where a common access/egress driveway is provided.
3. The slope of driveways shall be no greater than five percent (5%).

#### **5.5.02.2 Landscaping**

- A. A landscaped buffer zone at least twenty (20) feet wide, continuous except for approved driveways, shall be established along any side of the lot with road frontage to visually separate the building and its parking areas from the road.
- B. A landscaped buffer 50 feet shall be provided where a non-residential use abuts a residential use.
- C. A landscaped buffer of at least 100 feet shall be provided where an HB-1 district boundary abuts a Residential District (R1, R2, SA).
- D. At the sole discretion of the Planning Board, the width of the required buffers under paragraphs B and C above may be reduced to 20 feet and 50 feet respectively where site constraints do not allow for the full required buffer and an opaque fence and/or other comparable method is provided to adequately buffer the abutting residential use or district.
- E. Access drives may be allowed in the buffer areas under paragraph B and C above, except that the Board may require an opaque fence and/or additional plantings to adequately buffer the abutting residential use or district.
- F. The buffer zones shall be planted with grass, ground cover, medium height shrubs, and shade trees planted at least every fifty (50) feet. The buffer zone shall include both deciduous and evergreen shrubs and trees. Trees and shrubs at driveway intersections shall be set back a sufficient distance from such intersections so as not to obstruct traffic visibility.
- G. An opaque buffer shall be provided to screen exposed storage areas, machinery, garbage "dumpsters", service areas, truck loading areas, utility buildings and structures from the view of abutting properties and streets, using plantings, fences and other methods compatible with the goals of this regulation.
- H. Parking shall not be located within required buffer areas.
- I. Parking areas with more than thirty (30) spaces shall contain plantings of trees, shrubs, and/or groundcovers within the parking area in landscaped islands, so that the total amount of landscaped area within the parking lot is equal to a minimum of 5% of the area of parking spaces provided (i.e. 10 square feet per parking space for a standard 200 square foot parking space). At the discretion of the Planning Board, the amount of landscaping within a parking area may be reduced where an equivalent amount of landscaping (above what is required elsewhere in Section 5.5) is provided elsewhere on the lot, or where the proposed use abuts a residential district or use where the 50 foot and 100 foot buffers are required. At least one shade tree per thirty-five (35) parking spaces shall be provided. Trees planted within parking areas shall be planted in protected pervious plots of at least 60 square feet in area.
- J. All landscaped areas and buffers shall be maintained in good condition and shall be kept free of refuse and debris. Shrubs or trees that die shall be replaced within one growing season.
- K. Appropriate water management procedures shall be followed to serve all landscaped areas, including irrigation systems if warranted.
- L. The Planning Board may require a bond to ensure that required landscaping improvements are maintained and survive for at least one growing season following the completion of planting.
- M. The Planning Board shall have the authority to adopt from time to time suitable landscaping regulations, which may include the required height and spread of trees and shrubs in buffer zones and parking areas.

#### **5.5.02.3 Surface Water Run-Off**

- A. The Planning Board may review projects for compliance with DEP Stormwater Management policy.
- B. All slopes exceeding 15% resulting from site grading shall be stabilized.
- C. Projects shall be designed to minimize soil erosion and sedimentation.

### **5.5.03 Special Permits in the HB-1 District**

Wherever in this bylaw and the related sections of the Town of Leicester Zoning Bylaw a permitted use in the HB-1 district requires a Special Permit, the administrative procedures described below shall govern the procedure for issuance of this Special Permit.

#### **5.5.03.1 Requirements and Procedures**

- A.** The special permit granting authority for all special permits in the HB-1 District shall be the Planning Board except where such authority is specifically delegated to the Zoning Board of Appeals. No building, use or occupancy permits for any construction of any use designated "SP" (Special Permit) under the HB-1 District shall be issued, except in accordance with the terms of a special permit as set forth herein. This shall apply to new construction, change in use to a use requiring a special permit, and resumption of any use requiring a special permit where the use has been discontinued or abandoned for more than two (2) years.
- B.** Applicants for Special Permits under this section shall submit plans in compliance with the Leicester Planning Board Rules & Regulations for Special Permit Applications.
- C.** Procedures for Special Permits (filing, hearing notification, and decision timelines) shall follow MGL Ch.40A, Section 9, Special Permits, and Section 11, Notice for Public Hearing.

#### **5.5.03.2 Special Permit Review Criteria**

The Planning Board shall grant a special permit only after finding that the proposed use will be consistent with the purpose and intent of this bylaw, and that the proposed use or structure is in conformance with the following criteria:

- A.** Provision shall be made for convenient and safe vehicular and pedestrian circulation within the site and in relation to adjacent streets and property. The service level of adjacent streets shall not be significantly reduced due to added traffic volume or type of traffic in accordance with the most recent edition of the Massachusetts Highway Department Highway Capacity Manual;
- B.** The proposed use shall not overload the capacity of water and sewer systems, stormwater drainage, solid waste disposal facilities, and other public facilities;
- C.** The design of the project shall provide for adequate methods of disposal of sewage, refuse, or other wastes generated by the proposed use;
- D.** The project shall comply with all applicable environmental laws and regulations;
- E.** The proposed project shall be consistent with Leicester's Master Plan;
- F.** The project shall comply with all Site Development Standards required in the HB-1 District.

### **5.5.04 Allowed Uses**

Uses shall be allowed and regulated as specified in Section 3.2 and Section 3.33. Signs shall be allowed and regulated as specified in Section 3.2.07 for the Business (B) District.

### **5.5.05 Severability**

If any provision of this Section 5.5 of Leicester's Zoning By-Law is held invalid by a court of competent jurisdiction, the validity of the remainder of the bylaw shall not be affected thereby.

## 5.6 Greenville Village Neighborhood Business District (NB)

### 5.6.01 Purpose and Intent

To enable the development and redevelopment of Leicester's Greenville area in keeping with the historic development pattern including the size and spacing of structures by allowing, in addition to residential uses, convenient small-scale retail, service and other small-scale commercial uses compatible with nearby residential areas, which minimize traffic, parking visibility, late hour operations, destruction of historic buildings or architectural features, or other characteristics not compatible with the existing character of the surrounding residential neighborhood, and further providing that no such use shall be permitted which would be detrimental or offensive by reason of odor, noise, excessive vibration or danger of explosion or fire.

### 5.6.02 Permitted Uses

No building or structure shall be used and no change shall be made in the use of land or premises, except for one or more of the following purposes:

**5.6.02.1** All uses that are permitted in the Residential 1 District (R1), under Section 3.2, Schedule of Use Regulation, except that the Planning Board shall be the Special Permit Granting Authority for all uses listed as requiring a special permit, and unless otherwise regulated in this Section 5.6.

**5.6.02.2** All non-residential projects, of any size, shall require site plan review (See Section 5.2) in the Neighborhood Business (NB) district. The following uses are allowed with site plan review by the Planning Board, provided that no individual establishment shall exceed 3,000 square feet in gross floor area, except as regulated under Section 5.6.03.4 below.

- A. Retail services, including but not limited to a drug or package store; grocery, variety, clothing or shoe store; hardware or household appliance sales and services; music store; computer store; book, card, or stationery store; news dealer.
- B. Professional or administrative offices.
- C. Office or clinic for medical or dental examination or treatment of persons as outpatients, including laboratories incidental thereto.
- D. Financial institution, such as bank or credit union.
- E. Personal services, including but not limited to a barber or beautician; pickup or self-service laundry or dry cleaning; garment or shoe makers and repairers; florist; printing, publishing or photocopying; or photographer's studio
- F. Artisans, Jewelry Makers, Handicrafts, Artists Studios
- G. Mortuary, undertaker, or funeral establishment.
- H. Shop of a plumber, carpenter, electrician, upholsterer or similar workshop or repair establishment conducted entirely within an enclosed structure.
- I. Restaurant, lunchroom, or other eating establishment primarily for on-premises consumption, not to include fast food establishment.
- J. Delicatessen, traditional bakery, confectionery, caterer, and other similar establishments, which incidentally sell retail food and beverages in disposable containers for off-site consumption.
- K. Small-Scale Ground-Mounted Solar Energy Systems (Medium-Scale and Large-Scale Ground-Mounted Solar Energy Systems are prohibited.)

### 5.6.03 Special Permit Allowed Uses

The following uses shall require a special permit for use from the Planning Board:

**5.6.03.1** Business uses as listed in Section 3.2.03, which are not listed above in Section 5.6.02.2, provided that no individual establishment shall exceed 3,000 square feet in gross floor area, except as regulated under Section 5.6.03.4.

**5.6.03.2** Drive-through facility.



**5.6.03.3** Take-out establishments primarily engaged in the sale, dispensing or serving of food, refreshments or beverages for consumption off the premises or consumption in vehicles temporarily parked on the premises, or at tables, benches or counters, the majority of which are out of doors, not to include establishments commonly known as fast food establishments.

**5.6.03.4** Establishments that exceed 3,000 square feet in gross floor area per establishment, provided that in no event may a special permit be issued for individual establishments in excess of 6,000 square feet in gross floor area.

#### **5.6.04 Prohibited Uses:**

5.6.04.1 Any use not expressly permitted above.

5.6.04.2 Vehicle-related uses (sales, service and repair of all vehicle types including but not limited to trucks, boats and recreational vehicles, towing companies, taxi or limousine service, etc.).

#### **5.6.05 Site Development Standards**

All non-residential use, or conversion to a non-residential use, within the NB district shall comply with all Site Development Standards in Section 5.6.05.1 through 5.6.05.3 described below:

##### **5.6.05.1 Parking & Loading**

Non-residential uses within a NB district shall provide parking and loading facilities in compliance with Section 5.1, PARKING AND LOADING AND UNLOADING SPACE, and the following additional requirements:

- A. Parking facilities sufficient to accommodate the motor vehicles of all employees, customers and other persons normally visiting the site at any time shall be provided on the lot and off the street.
- B. In determining the appropriate number of parking spaces required, the Planning Board may give consideration to the hours of usage of the proposed use/structure, the opinion of municipal officials or consultants as to the adequacy or inadequacy of parking spaces within the specific area of the proposed use/structure, as well as other relevant information to assist the Planning Board in determining the need for additional parking for motor vehicles.
- C. All parking shall be provided on the same lot with the principal use or on a contiguous lot within the same zoning district, provided that no space is counted as meeting the requirements of more than one building or use.
- D. Parking shall be located to the side or rear of the primary structure.
- E. Parking areas serving all non-residential structures shall be hard-paved.
- F. Parking areas shall include handicap accessible parking spaces as required by 521 CMR, Architectural Access Board Code, as may be amended from time to time.
- G. To the maximum extent feasible, loading areas shall be located at the rear of the building, off the street right-of-way.
- H. Adequate turning and maneuvering space shall be provided for loading areas, without encroachment into parking areas.
- I. Parking area lighting may not shine beyond the property lines, except for driveway entrances where light may shine onto the immediate area of the street right-of-way.

##### **5.6.05.2 Landscaping**

- A. A landscaped buffer zone, of at least the width of the required setback, continuous except for approved drive-ways, shall be established along any side of the lot with road frontage to visually separate the building and its parking areas from the road.
- B. A landscaped buffer zone along the side and rear of each lot, of at least the width of the required side and rear setback, shall be provided where a proposed non-residential use abuts a residential use.
- C. A landscaped buffer zone of at least 50 feet shall be provided where a NB district boundary abuts a Residential District (R1, R2, and SA).
- D. The buffer zones shall be planted with grass, ground cover, medium height shrubs, and shade trees planted at least every fifty (50) feet. The buffer zone shall include both deciduous and evergreen shrubs and trees.

Trees and shrubs at driveway intersections shall be set back a sufficient distance from such intersections so as not to obstruct traffic visibility.

- E. An opaque buffer shall be provided to screen exposed storage areas, machinery, garbage “dumpsters”, service areas, truck loading areas, utility buildings and structures from the view of abutting properties and streets, using plantings, fences and other methods compatible with the goals of this regulation.
- F. Parking shall not be located within required buffer areas.
- G. All landscaped areas and buffers shall be maintained in good condition and shall be kept free of refuse and debris. Shrubs or trees that die shall be replaced within one growing season.
- H. Appropriate water management procedures shall be followed to serve all landscaped areas, including irrigation systems if warranted.
- I. The Planning Board may require a bond to ensure that required landscaping improvements are maintained and survive for at least one growing season following the completion of planting.
- J. The Planning Board shall have the authority to adopt from time to time suitable landscaping regulations, which may include the required height and spread of trees and shrubs in buffer zones and parking areas.

#### **5.6.05.3 Design**

The Planning Board shall have the authority to adopt from time to time suitable regulations to specify design standards within the Greenville Village Neighborhood Business District. Such standards may include regulation of building form and features, architectural details, and historic buildings.

### **5.6.06 Special Permits – NB District**

#### **5.6.06.1 Requirements and Procedures**

- A. The special permit granting authority for all special permits in the NB District shall be the Planning Board except where such authority is specifically delegated to the Zoning Board of Appeals. No building, use or occupancy permits for any construction of any use designated “SP” (Special Permit) under the NB District shall be issued, except in accordance with the terms of a special permit as set forth herein. This shall apply to new construction, change in use to a use requiring a special permit, and resumption of any use requiring a special permit where the use has been discontinued or abandoned for more than two (2) years.
- B. Applicants for Special Permits under this section shall submit plans in compliance with the Leicester Planning Board Rules & Regulations for Special Permit Applications.
- C. Procedures for Special Permits (filing, hearing notification, and decision timelines) shall follow MGL Ch.40A, Section 9, Special Permits, and Section 11, Notice for Public Hearing.

#### **5.6.06.2 Special Permit Review Criteria**

The Planning Board shall grant a special permit only after finding that the proposed use will be consistent with the purpose and intent of this bylaw, and that the proposed use or structure is in conformance with the following criteria:

- A. Provision shall be made for convenient and safe vehicular and pedestrian circulation within the site and in relation to adjacent streets and property. The service level of adjacent streets shall not be significantly reduced due to added traffic volume or type of traffic in accordance with the most recent edition of the Massachusetts Highway Department Highway Capacity Manual;
- B. The proposed use shall not overload the capacity of water and sewer systems, stormwater drainage, solid waste disposal facilities, and other public facilities;
- C. The design of the project shall provide for adequate methods of disposal of sewage, refuse, or other wastes generated by the proposed use;
- D. The project shall be compatible in character and scale with existing uses and other uses allowed by right in the district.
- E. The project shall comply with all applicable environmental laws and regulations;
- F. The proposed project shall be consistent with Leicester's Master Plan;
- G. The project shall comply with all Site Development Standards required in the NB district.

## 5.7 Senior Village Developments

### 5.7.01 Intent and Applicability

The purpose of this section is to encourage development of master-planned residential communities for persons fifty-five (55) years of age and older, by allowing a greater variety of uses and building types at a higher density than would normally be allowed to promote affordable housing and the preservation of open space within the development. It is intended that this section provide a mechanism for development of a range of housing types and facilities that are responsive to the socio-cultural, health care, and recreational needs of senior residents; to achieve land development that is responsive to an analysis of the environmental assets and constraints of a site; and to encourage well-integrated development in terms of land use and major design elements such as buildings, roads, utilities, drainage systems and open space.

### 5.7.02 Senior Village Developments:

As used in this bylaw, a Senior Village Development shall mean a master-planned development ("planned unit development") of land, as a unified, self contained, residential community, constructed expressly for use and residency by persons who have achieved a minimum age requirement for residency of fifty five (55) years of age or older in accordance with M.G.L. Chapter 151B, Section 4, Subsection 7, and also incorporating the preservation of natural open space areas as an integral element of the development. A Senior Village Development shall include at least one (1) type of Senior Village Development Residential Use, which may include detached or attached dwellings of any combination, and may include any of the following: Adult Day Care Facilities, Senior Village Resident Services and Senior Village Community Centers as defined in Section 5.7.03. A Senior Village Development, as defined herein, shall be permitted within the following zoning districts: R1, R2, SA, BR-1, RIB, BI-A and B upon the granting of a special permit by the Planning Board. Senior Village Developments shall also be allowed as part of a Recreational Development under Section 2.3.05 of Leicester's Zoning By-law upon the granting of a special permit by the Planning Board.

### 5.7.03 Definitions:

**Adult Day Care Facility:** A facility that offers to seniors daytime programs, health care and assessment, personal care, social programs, recreational activities, and meals and transportation, but does not provide a residence or overnight accommodations.

**Assisted Living or Congregate Living Residence Facility (a Senior Village Development Residential Use):**

An assisted living residence facility, as defined by M.G.L. Chapter 19D, Section 1.

**Continuing Care or Life Care Retirement Facility (a Senior Village Development Residential Use):**

A facility that includes a combination of types of dwellings or a lifetime continuum of accommodations and care for senior residents, including independent living, assisted/congregate living, and long-term care facilities.

**Dwelling Unit:** a) a single dwelling unit for single family homes, duplex housing, townhouse style housing or other multi-family housing, b) a room or group of rooms considered a single dwelling unit for Assisted Living, Independent Living or Congregate Living Residence Facility such as an efficiency apartment, or c) a single room in a Long Term Care Facility.

**Independent Living Residence Facility (a Senior Village Development Residential Use):** A facility that provides residential accommodations for senior adults who do not require medical or skilled nursing care. Residents shall have individual dwellings with living and bathroom facilities, and which may have individual kitchen facilities. The Independent Living Residence Facility may include a Senior Village Community Center or Community Building(s), or similar common areas such as a common dining facility, and space for the provision of social, psychological, and educational programs. The facility may provide home health care or other community-based services on an individual basis and offer meals, linen, and housekeeping services. The Independent Living Residence Facility may provide residence for a superintendent or for maintenance staff, but there shall be no on-site residence of medical or other staff.

**Long-Term Care Facility (a Senior Village Development Residential Use):** A building or group of buildings which is licensed or approved by the Massachusetts Department of Public Health to provide 24-hour, intensive, skilled and supportive nursing care, convalescent, or chronic care under medical supervision to individuals who, by reason of advanced age, chronic illness, or infirmity, are unable to care for themselves. A Long-Term Care Facility also typically provides personal care services in a supervised environment, and may contain common areas for therapy, recreation and dining. Further, the facilities may also include on-premise medical offices and treatment facilities related to the care of the residents.

**Senior Village Community Center or Community Building(s):** A building or group of buildings, erected solely for the use of the residents of a Senior Village Development and their guests, that provides educational, recreational, or social services such as: adult education center, adult day care facility, library, place of worship, game room, entertainment room, sewing room, kitchen, cafeteria or dining room, laundry facilities, exercise room, pool, toilet facilities, locker rooms for men and women, and similar facilities.

**Senior Village Multi-Family Residential Units:** (a Senior Village Development Residential Use): Multi-family senior residential units, which may include townhouses, duplexes, triplexes, garden-style apartments, or other multi-family buildings.

**Senior Village Resident Service(s):** A nursing home; transportation services for residents; laundry facilities; financial services; barber/beautician; medical evaluation; home health care; adult day care facility; meals on wheels program; exercise or physical therapy center; recreational and educational activities; and other similar services or activities. All Resident Services shall be operated primarily for the benefit of residents of the Senior Village Development.

**Senior Village Residential Subdivision (a Senior Village Development Residential Use):** A subdivision of land within a Senior Village Development that results in creation of individual lots upon which individual single-family dwellings are to be constructed for residency by Seniors. The individual single-family dwellings may be detached homes, attached townhouses, or other building type(s) approved by the Planning Board that is/are each designed for occupancy by an individual family.

**Senior:** An individual who is 55 years of age or older.

**Senior Village Town House (a Senior Village Development Residential Use):** A residential building of two or more stories in height containing a single dwelling that is one of a group of three or more such buildings that are attached or semi-attached to one another, sharing at least one common or party or fire wall, and with each building having at least one floor at ground level with a separate entrance.

#### 5.7.04. General Development Standards and Dimensional Requirements

An application for a special permit for a Senior Village Development must conform to the following standards:

##### 5.7.04.1 General Standards

- A. Age Restriction.** All dwellings in a Senior Village Development shall be subject to an age restriction described in a deed/deed rider, restrictive covenant, or other document approved by the Planning Board that shall be recorded at the Registry of Deeds or the Land Court. The age restriction shall restrict occupancy of the dwelling units to seniors age 55 or older, and their spouses/partner of any age and provide for live-in care providers consisting of a family member, partner, or medical professional and limited guest visitation rights if the Planning Board so approves and specifies this in its Special Permit. In the event of the death of a qualifying owner/occupant of a unit in a Senior Village Development, the surviving occupant of a qualifying owner/occupant, regardless of age, shall be allowed to remain until death or remarriage/union to a non-qualifying individual.
- B. Lot Coverage.** Building footprints and all other impervious surfaces shall not exceed twenty-five percent (25%) of the total acreage of any Senior Village Development.
- C. Open Space Requirement.** A minimum of twenty-five percent (25%) of the total acreage of a Senior Village Development shall be set aside as common open space for the use of the senior residents and/or the general public. It is the intention of this bylaw that the common open space shall generally consist of a large, single, contiguous area of open space with logical boundaries, which shall retain those natural features of the site most worthy of preservation in their natural state, and which connect with existing or potential conservation or open space areas on adjoining parcels whenever possible. Not more than twenty-five percent (25%) of the common open space shall consist of inland wetlands, as defined pursuant to MGL Ch.131, Section 40. The common open space shall be dedicated and used for conservation, recreation, or park purposes, or for a combination of those uses, as may be permitted or required by the Planning Board. The developer or applicant shall record an open space restriction in the Registry of Deeds in favor of the Town of Leicester.
- D. Exemption from Phased Growth Zoning Bylaw.** Senior Village Developments are exempt from Leicester's Phased Growth Zoning Bylaw, Section 6.2.01 of the Leicester Zoning Bylaw.

- E. Maximum Number of Senior Village Development Units.** The maximum number of permitted housing units with- in all permitted Senior Village Developments in the Town of Leicester shall be six hundred (600).
- F. Streets, Utilities, and Lighting.** All roads, driveways, utilities, and drainage facilities within a Senior Village Development shall be designed and constructed in conformance with the Leicester Subdivision Controls Rules and Regulations (Subdivision Regulations). Submission and approval of a Definitive Subdivision Plan shall be required as a condition of any Special Permit granted under this Section 5.7. The Planning Board shall require a performance guarantee consistent with the Leicester Subdivision Regulations for required improvements for streets, ways, drain- age, erosion control, utilities and other items specified by the Planning Board as a condition of its approval.
- G. Design.** The Planning Board shall have the authority to adopt from time to time suitable regulations to specify design standards within the Senior Village Developments. Such standards may include regulation of building form and features, architectural details, and historic buildings.
- H. Parking.** For Senior Village Developments consisting of single family homes, duplex housing, townhouse style housing, multi-family housing, or Independent Living Residence Facility, there shall be at least two (2) off-street parking spaces per principal dwelling unit. Assisted Living or Congregate Care Facilities shall provide a minimum of one (1) off-street parking space per dwelling unit. Long-Term Care Facilities shall have at least one-half (.5) off- street parking space per bed or dwelling unit. Additional parking in proximity to any other Senior Village Use serving residents in common, or guest parking, may be required, as determined by the Planning Board. The Planning Board may waive the minimum parking requirements, at the request of the applicant, if sufficient evidence of the adequacy of the proposed parking is provided. In determining the adequacy of proposed parking, the Planning Board may give consideration to the hours of usage of the proposed use(s) and structure(s), the opinion of municipal officials or consultants as to the adequacy or inadequacy of parking spaces within the specific area of the pro- posed use(s) and structure(s), as well as other relevant information to assist the Planning Board in determining parking demand.

#### 5.7.04.2 Dimensional Requirements

- A.** Maximum height and Number of Stories for Senior Village Developments shall adhere to the requirements of the underlying zoning district as specified in Section 4.2.
- B.** A Senior Village Development shall be on a site that is a minimum of ten (10) acres in area. The site may consist of a single lot or of multiple, contiguous lots, and may be developed in multiple phases. Each Senior Village Development site shall have frontage on an existing street or way that shall not be less than 50 feet wide and shall maintain a minimum 50 foot wide right-of-way access corridor to the site.

#### C. Table of Density Requirements:

Type of Senior Village Development	Allowed Units Per Acre*
Single family detached homes	4
Duplexes, Triplexes, Townhouses or other multi-family residential dwelling units	6
Assisted Living, Congregate Care Facility, or Independent Living Facility occupying a single structure	16
Long Term Care Facility	20

\* Exclusive of required open space.

- D. Setbacks:** All structures within Senior Village Developments shall be set back a minimum of 50 feet from the outside perimeter property line of the Senior Village Development. This 50 foot setback is intended to act as a buffer and shall not be disturbed from its natural state for the entire distance except for additional plantings or as required by the Planning Board and excepting the access drive(s). All structures shall be setback a minimum of 25 feet from interior roadways.
- E. Distance between Structures:** The distance between structures shall be no less than the average height of the two structures or twenty-five (25) feet, whichever is greater. Structures and associated utilities shall be configured so that future division into separate lots for individual structures is possible.
- F. Individual Lots:** Individual lots within a Senior Village Residential Subdivision shall have a minimum lot

area of ten thousand (10,000) square feet and shall have a minimum of fifty (50) feet of frontage. Structures shall be set back at least 15 feet from side and rear lot lines, except where the side or rear lot line is the outside perimeter of the total Senior Village Development parcel, where it must be 50 feet in accordance with Section 5.7.04.2.D.

### **5.7.05 Special Permits for Senior Village Developments**

#### **5.7.05.1 Procedures**

- A.** Senior Village Developments will be authorized only by Special Permit granted by the Planning Board. A special permit shall be required for new construction, change in use to a Senior Village Development, and resumption of use where a Senior Village Development use has been discontinued or abandoned for more than two (2) years.
- B.** Applicants for Special Permits under this section shall submit plans in compliance with the Leicester Planning Board Rules & Regulations for Special Permit Applications.
- C.** Procedures for Special Permits (filing, hearing notification, and decision timelines) shall follow MGL Ch.40A, Section 9, Special Permits, and Section 11, Notice for Public Hearing.

#### **5.7.05.2 Special Permit Review Criteria**

The Planning Board shall grant a special permit only after finding that the proposed use will be consistent with the purpose and intent of this bylaw, and that the proposed use or structure is in conformance with the following criteria:

- A.** The plans shall provide adequately for convenience and safety of vehicular and pedestrian movement within the site and in relation to adjacent streets and property;
- B.** The proposed use shall not overload the capacity of water and sewer systems, stormwater drainage, solid waste disposal facilities, and other public facilities;
- C.** The design of the project shall provide for adequate methods of disposal of sewage, refuse, or other wastes generated by the proposed use;
- D.** The development is an appropriate location and does not significantly alter the character of the neighborhood in comparison to a single-family residential development;
- E.** The project plan responds to the recommendations of Town Boards and Departments;
- F.** The project shall comply with all of the provisions of this Section 5.7 in its entirety.

The Planning Board may impose such additional conditions as it finds reasonably appropriate to safeguard existing neighborhoods or otherwise serve the purposes of Section 5.7.



## 5.8 BUSINESS DISTRICT & CENTRAL BUSINESS DISTRICT SITE DEVELOPMENT STANDARDS

**[Amended @ ATM 5-5-2015]**

### 5.8.01 Purpose

To encourage commercial development that enhances the community and improves the tax base while minimizing adverse impacts to abutting residential properties.

### 5.8.02 Applicability

The following site development standards shall apply to all new construction of non-residential uses, expansions of more than 25% of the existing non-residential uses, and increases of more than 10 parking spaces.

### 5.8.03 Site Development Standards

**[Amended STM 11/14/2017, Article 11]**

#### A. Parking Requirements

1. Off-Street parking facilities sufficient to accommodate the motor vehicles of all employees, customers and other persons normally visiting the site shall be provided in accordance with the Planning Board's Parking Regulations.
2. Adequate turning and maneuvering space shall be provided for loading areas without encroachment into parking areas.
3. Adequate illumination shall be provided for the comfort and safety of persons using parking and loading areas.
4. Parking and loading area lighting shall not shine beyond the property lines, except for driveway entrances where light may shine onto the immediate area of the street right-of-way.
5. Provision for safe and convenient pedestrian access shall be incorporated into plans for new parking areas.
6. Parking areas for all commercial uses shall be hard paved.
7. Parking areas shall include handicapped-accessible parking spaces as required by 521 CMR, Architectural Access Board Code, as may be amended from time to time.
8. To the maximum extent feasible, parking and loading areas shall be located to the side or rear of the primary structure.

#### B. Landscaping and Screening

1. A landscaped area of at least five (5) feet shall be provided along any side of the lot with road frontage to visually separate the building and its parking area from the road.
2. A landscaped buffer zone of at least ten (10) feet shall be provided where a non-residential use abuts a residential use. The Planning Board may require an opaque landscaped buffer if the Board determines that the nature of the commercial use requires complete screening from the abutting residential use. An opaque fence or other comparable method may be allowed at the discretion of the Planning Board rather than a landscaped buffer where site constraints do not allow for the 10-foot landscaped buffer.
3. Large parking areas shall be subdivided with landscaped islands. At least one shade tree per thirty-five (35) parking spaces shall be provided. Trees planted within parking areas shall be planted in protected pervious plots of at least 60 square feet in area. At the discretion of the Planning Board, shade trees may be clustered or planted adjacent to the parking area.
4. Landscaped areas shall be planted with ground cover, medium height shrubs, and shade trees. Landscaped areas shall include both deciduous and evergreen shrubs and trees and shall be designed to maintain traffic visibility.
5. At the discretion of the Planning Board, existing vegetation may be permitted in lieu of new plantings in required landscaped areas and buffer zones.
6. Existing trees, shrubs, and other naturally occurring vegetation may not be removed without express written permission from the Planning Board. Permission may be granted by the Planning Board for the selective removal of dead, dying, or diseased trees within landscaped areas or buffer zones upon submission of documentation certifying that such removal is necessary to protect the health of the surrounding forest and/or to protect the public health, safety and welfare.
7. All landscaped areas and buffer shall be maintained in good condition and shall be kept free of refuse

and debris. Shrubs or trees that die shall be replaced within one growing season. Appropriate water management procedures shall be followed to serve all landscaped areas, including irrigation systems if warranted.

8. An opaque buffer shall be provided to screen exposed storage areas, machinery, garbage “dumpsters,” service areas, truck loading areas, and utility buildings and structures from the view of abutting properties using plantings, fences, or other methods approved by the Planning Board.
9. The Planning Board may require a bond to ensure that required landscaping improvements are maintained and survive for at least one growing season following the completion of planting.
10. The Planning Board shall have the authority to adopt from time to time suitable landscaping regulations, which may include the required height and spread of trees and shrubs in buffer zones and parking areas.

### **C. Design**

The Planning Board shall have the authority to adopt from time to time suitable regulations to specify design standards within the Business District and Central Business District. Such standards may include regulation of building form and features, architectural details, and historic buildings.

## **5.8.04 Special Permits in the Business (B) and Central Business Districts**

### **A. Requirements and Procedures**

1. The special permit granting authority for all special permits in the B and CB Districts shall be the Planning Board except where such authority is specifically delegated to the Zoning Board of Appeals. No building, use or occupancy permits for any construction of any use designated “SP” (Special Permit) under the B and CB Districts shall be issued, except in accordance with the terms of a special permit as set forth herein. This shall apply to new construction, change in use to a use requiring a special permit, and resumption of any use requiring a special permit where the use has been discontinued or abandoned for more than two (2) years.
2. Applicants for Special Permits under this section shall submit plans in compliance with the Leicester Planning Board Rules & Regulations for Special Permit Applications.
3. Procedures for Special Permits (filing, hearing notification, and decision timelines) shall follow MGL Ch.40A, Section 9, Special Permits, and Section 11, Notice for Public Hearing.

### **B. Special Permit Review Criteria**

1. Provision shall be made for convenient and safe vehicular and pedestrian circulation within the site and in relation to adjacent streets and property. The service level of adjacent streets shall not be significantly reduced due to added traffic volume or type of traffic in accordance with the most recent edition of the Massachusetts Highway Department Highway Capacity Manual;
2. The proposed use shall not overload the capacity of water and sewer systems, storm water drainage, solid waste disposal facilities, and other public facilities;
3. The design of the project shall provide for adequate methods of disposal of sewage, refuse, or other wastes generated by the proposed use;
4. The project shall comply with all applicable environmental laws and regulations;
5. The proposed project shall be consistent with Leicester's Master Plan; and,
6. The project shall comply with all of the above B and CB District Site Development Standards.
7. In the Central Business (CB) district, the following additional special permit criteria apply:
  - a. The proposed project shall be consistent with the purpose & intent of the Central Business District
  - b. New construction or expansions of more than 25% of commercial and multi-family structures shall substantially conform to any design guidelines adopted for the CB district. In the absence of design guidelines, the Board shall evaluate the degree to which the applicant has designed new construction to be compatible in style and scale to existing abutting properties.
  - c. Parking areas for new structures shall be located to the side or rear of new structures except where there is no practical alternative.
  - d. The project shall, to the maximum extent feasible, minimize demolition of historically significant buildings. For the purposes of this bylaw, historically significant buildings shall include all structures subject to the Town of Leicester demolition delay bylaw as well as any other properties otherwise



eligible for or on State or Federal Register of Historic Resources. Where demolition is unavoidable, the Board shall evaluate how demolition is proposed to be mitigated by the project proponent.

## 5.9 STORMWATER MANAGEMENT

**[New Bylaw voted ATM 5/5/2008]**

**5.9.01** All drainage systems shall be designed in compliance with Massachusetts DEP Stormwater Management policy.

## 5.10. Adaptive Reuse Overlay District (AROD).

**[Amended ATM 5/5/2008]**

### A. The purpose of the Adaptive Reuse Overlay District (AROD) is to:

- (1) Provide specific regulations allowing for the reuse of municipal, religious, and historic mill buildings in a way that promotes public health, safety and welfare and is in keeping with the adjacent character of the neighborhood.
- (2) Provide regulatory flexibility and intensification of use in municipal, religious, and historic mill buildings to prevent disinvestment or deterioration of buildings that have become obsolete for their original purposes.
- (3) Allow for the reuse of municipal, religious, and historic mill buildings as a means to increase the town's overall tax base, create employment opportunities and ensure efficient use of municipal services so as to not create a burden on these services.
- (4) Encourage the adaptive reuse of historic buildings where such reuse would more effectively promote, preserve, and enhance the architectural character of the surrounding neighborhood than would the redevelopment of the site following the demolition of these landmark structures.

### B. Eligibility for Conversion

The following shall be eligible for conversion to those uses listed in Section D of this bylaw:

- (1) A municipal building located in any zoning district if it was used for not less than fifteen (15) years for municipal use.
- (2) Any existing structure having not less than 10,000 square feet constructed more than sixty (60) years ago and historically part of a mill complex.
- (3) Any existing structure used for one or more of the following religious uses for not less than fifteen (15) years: churches, convents, schools, rectories, and parish halls.

### C. Scope of Authority

The AROD is superimposed over all the underlying zoning districts in the Town. Except as specified in this Section 5.10, the provisions of the underlying zoning districts shall remain in effect. The regulations of this overlay district shall govern reuse, reconstruction or expansion of those buildings eligible for conversion as describe in Subsection B above. The Special Permit Granting Authority for an Adaptive Reuse Development (ARD) under this section shall be the Planning Board. Adaptive Reuse Developments which utilize any of the provisions of this Section 5.10 relative to use, parking, and/or dimensional controls shall require a special permit from the Planning Board. Applicants for Special Permits under this section shall submit plans in compliance with the Leicester Planning Board Rules & Regulations for Special Permit Applications.

### D. Uses Permitted

- (1) Uses allowed by the right  
The following uses be allowed by-right:
  - a) Any uses permitted by right in the underlying zoning district in which the structure is located.
  - b) Conversion of former municipal buildings to private medical or professional offices.
- (2) Uses allowed by Special Permit  
The following uses are allowed by special permit and subject to site plan review:
  - a) Senior Village Development residential uses, Adult Day Care Facilities, and Senior Village Community Centers as defined under Section 5.7.03
  - b) Multi-family
  - c) Professional or administrative offices

- d) Community recreational center or personal training centers
- e) Medical Clinic, Dental Office, Veterinarian Office, and Ancillary Offices and Facilities
- f) Community center or conference center with meeting rooms
- g) Studios for art, drama, speech, dance, or music
- h) Retail
- i) Indoor commercial recreation or health club
- j) Research and Development uses including ancillary office use and electronic and computer laboratories, but not including ancillary manufacturing, assembly, sale or resale or storage for sale or resale of any goods, items, or material
- (3) Multiple or Mixed Uses: Any combination of uses allowed by right in D(1), and uses allowed by special permit in D(2), may be allowed provided they are compatible with each other and maintain the public health, safety and welfare of the community.
- (4) Uses required by MGL c40A, Section 3, such as public and private non-profit religious and educational institutions are allowed in the AROD by right subject to Site Plan Review.

#### **E. Parking Requirements**

- (1) For all new buildings and structures and for reuse or substantial restoration of existing buildings or structures within the Adaptive Reuse Overlay District, the parking requirement of Section 5.1 of the Zoning Bylaw shall apply.
- (2) The Planning Board shall be authorized to modify parking, loading requirements, dimensional requirements for off-street parking and loading areas; layout requirements and the number of required spaces in conjunction with the grant of a special permit pursuant to this Section 5.10. This provision shall only apply to uses in the Adaptive Reuse Overlay District which are located in buildings or structures in existence as of the date of the adoption of this Section of the Leicester Zoning Bylaw. In determining the appropriate reduction, the Planning Board may give consideration to the hours of operation and/or usage of the proposed uses within the development, the opinions of merchants, residents and municipal officials as to the adequacy or inadequacy of parking spaces within the surrounding area, as well as other relevant information. The decrease in number of required spaces shall not create undue congestion, traffic hazards, or a substantial detriment to the neighborhood, and shall not derogate the intent and purpose of this Bylaw.

#### **F. Dimensional and Other Requirements**

- (1) The Planning Board, by Special Permit, shall have the authority to waive or modify dimensional controls set forth in Section 4 of the Zoning Bylaw.
- (2) The Site Development Standards for the underlying district are applicable. Where the underlying district does not have Site Development Standards, the standards for the Business (B) District shall apply. The Board, through the ARD special permit, may allow for modifications of Site Development Standards where not feasible due to existing site constraints.
- (3) For multi-family projects, the maximum number of dwelling units shall be established by the Planning Board after reviewing the following criteria:
  - a) Existing structures
  - b) Proposed method and efficacy of stormwater disposal
  - c) Availability of water and sewer
  - d) Trip generation, traffic safety and internal site traffic
  - e) Character of the proposed ARP and its relation to the surrounding neighborhood(s)
  - f) Character of the existing buildings and the potential for reuse thereof
  - g) Applicability of the Water Resource Protection Overlay District
  - h) Reports of the technical consultants of the Planning Board and all other reviewing boards
- (4) Existing Buildings may be expanded provided that such expansion is consistent with the building's historic character and scale and does not cause substantial detriment.
- (5) New Buildings may be constructed on the ARD site provided that the number, type, scale, architectural

scale, and uses within such new buildings shall be subject to Planning Board approval. For all new structures or buildings, the dimensional requirements of the underlying zoning district shall apply and, if applicable, to the extent that the dimensional requirements vary dependent upon the use of the building, the pre- dominant use based upon gross floor area utilized shall govern.

- (6) All proposed signs shall comply with Section 3.2.07 of the Bylaw, except that if the building and land on which situated are located in a single family district (SA, R1, R2), the Planning Board may permit a sign of no larger than 10 square feet which identifies only the building and its occupants.

**G. Standards for Approval**

- (1) As a condition of any special permit for the an Adaptive Reuse Project that proposes multi-family dwelling units, a minimum of ten (10%) of the total number of dwelling units shall be required, in perpetuity, to be restricted to persons qualifying as moderate income in accordance with the Massachusetts Department of Housing and Community Development definitions of low and moderate incomes.
- (2) The proposed project preserves or enhances the historic significance of existing buildings on or eligible to be on the State or National Register of Historic Places and, where applicable, the eligibility of the same for listing on the State or National Register of Historic Places as an individual property or a contributing property to an area.
- (3) Any expansion of existing buildings on or eligible to be on the State or National Register of Historic Places is consistent with the U.S. Secretary of the Interior's Standards for Rehabilitation, as determined by the Leicester Historical Commission.
- (4) The project shall have sufficient local infrastructure to accommodate the proposed development
- (5) The proposed ARD does not cause substantial detriment to the neighborhood after considering the following potential consequences
  - a) noise, during the construction and operational phases,
  - b) pedestrian and vehicular traffic,
  - c) environmental harm,
  - d) visual impact caused by the character and scale of the proposed structure(s), and

The SPGA may attach such additional conditions and limitations to a Special Permit granted under this Section as may be necessary to protect the neighborhood surrounding the property, and as may be necessary to encourage the most appropriate use of the land and building to be converted.

## 5.11 Large Wind Facilities

**[New bylaw voted STM 2-18-2009]**

### 1.0 Purpose

The purpose of this by-law is to provide for the construction and operation of large wind facilities as an alternative energy source and to provide standards that address public safety for the placement, design, construction, monitoring, modification and removal of wind facilities and minimize impacts on scenic, natural and historic resources of the Town of Leicester.

### 2.0 Definitions

**Height:** The height of a wind turbine measured from natural grade to the tip of the rotor blade at its highest point, or blade-tip height.

**Large Wind Facility:** On-site Wind Facilities and Utility-Scale Wind Facilities (as defined herein) with a rated nameplate capacity of more than 60 kilowatts and any wind turbine over 150 feet, or multiple small wind facilities on a single lot.

**On-Site Wind Facility:** A wind project, which is located at a commercial, industrial, agricultural, institutional, or public facility that will consume more than 50% of the electricity generated by the project on-site.

**Rated Nameplate Capacity:** The maximum rated output of electric power production equipment. This output is typically specified by the manufacturer with a "nameplate" on the equipment.

**Utility-Scale Wind Facility:** A commercial wind facility, where the primary use of the facility is electrical generation to be sold to the wholesale electricity markets.

**Wind Facility:** All equipment, machinery and structures utilized in connection with the conversion of wind to electricity. This includes, but is not limited to, transmission, storage, collection and supply equipment, substations, transformers, service and access roads, and one or more wind turbines.

**Wind Monitoring or Meteorological Tower (Met Towers):** A temporary tower equipped with devices to measure wind speeds and direction, used to determine how much wind power a site can be expected to generate.

**Wind turbine:** A device that converts kinetic wind energy into rotational energy that drives an electrical generator. A wind turbine typically consists of a tower, nacelle body, and a rotor with two or more blades.

### 3.0 Applicability

No utility-scale and on-site wind facilities (hereinafter "large wind facilities") shall be erected, constructed, installed, or modified as provided in this section without first obtaining a special permit from the Planning Board. This section applies to all large wind facilities proposed to be constructed after the effective date of this section. It does not apply to single stand-alone turbines under 60 kilowatts of rated nameplate capacity

### 4.0 Temporary Wind Monitoring Towers

Temporary Wind monitoring shall be permitted in all zoning districts subject to issuance of a building permit for a temporary structure and subject to conditions imposed by the Building Inspector.

### 5.0 Development Standards

Unless otherwise expressly provided by this section of the bylaw all requirements of the underlying zoning district shall apply and in addition the following standards shall apply:

#### 5.1 Visual Impact

The Applicant shall demonstrate to the satisfaction of the Board that the proposed facility will have minimal visual impact

#### 5.2 Height

Large wind facilities shall be no higher than 400 feet above the current grade of the land.

#### 5.3 Setback

Wind turbines shall be set back a distance equal to the total height of the wind turbine from all inhabited structures, overhead utility lines, public road or right of way and property boundaries, provided that no setback

shall be required from building or buildings which are on the same parcel and which are served by the wind facility.

#### **5.4 Minimum Lot Size**

Utility-scale wind facilities shall be located on a parcel of land that contains a minimum of 5 acres. On-site wind facilities shall be located on a parcel of land that complies with the minimum lot size of the applicable zoning district.

#### **5.5 Color, Finish & Design**

Wind facilities shall be painted a neutral, non-reflective color designed to blend with the surrounding environment, except where FAA regulations require high visibility colors, as demonstrated by the Applicant. Monopole towers are the preferred type of support for all wind facilities.

#### **5.6 Lighting**

Wind turbines shall be lighted only if required by the Federal Aviation Administration. Lighting shall be designed to minimize glare on abutting properties and except as required by the FAA be directed downward with full cut-off fixtures to reduce light pollution. Lighting of other parts of the wind facility, such as accessory structures, shall be limited to that required for safety and operational purposes, and shall be reasonably shielded from abutting properties.

#### **5.7 Shadow/Flicker**

Wind facilities shall be sited in a manner that minimizes shadowing or flicker impacts. (Flicker refers to the temporary blocking of the sun's rays with each pass of a rotor blade.) The applicant has the burden of proving that this effect does not have significant adverse impact on neighboring or adjacent uses through either siting or mitigation.

#### **5.8 Signs**

There shall be no signs except no trespassing signs, any signs required to warn of danger, or identification of the manufacturer of the wind energy facility. A sign is required that identifies the owner and operator with an emergency telephone number where the owner and operator can be reached on a twenty-four hour basis.

#### **5.9 Unauthorized Access**

Wind turbines or other structures part of a wind facility shall be designed to prevent unauthorized access. For instance, the tower shall be designed and installed so as to not provide step bolts or a ladder readily accessible to the public for a minimum height of 8 feet above the ground.

#### **5.10 Noise**

Except during short-term events such as high windstorms or utility outages, noise from the proposed wind turbine shall not exceed 60 dBA as measured from the nearest property line. This standard may be met through a 600-foot setback from the nearest property line and otherwise must be demonstrated by the applicant through scientific analysis to the satisfaction of the Planning Board.

#### **5.11 Land Clearing, Soil Erosion and Habitat Impacts**

Clearing of natural vegetation shall be limited to that which is necessary for the construction, operation and maintenance of the wind facility and is otherwise prescribed by applicable laws, regulations, and ordinances.

#### **5.12 Monitoring and Maintenance**

The applicant shall maintain the wind facility in good condition. The applicant shall maintain the facility in accordance with applicable manufacturers' warranties. Maintenance shall include, but not be limited to, painting, structural repairs, and integrity of security measures. Site access shall be maintained to a level acceptable to the local Fire Chief and Emergency Medical Services. The project owner shall be responsible for the cost of maintaining the wind facility and any access road, unless accepted as a public way, and the cost of repairing any damage occurring as a result of operation and construction. The applicant or facility owner shall maintain a phone number and identify a responsible person for the public to contact with inquiries and complaints throughout the life of the project.

#### **5.13 Utility Connections**

Reasonable efforts shall be made to locate utility connections from the wind facility underground, depending on appropriate soil conditions, shape, and topography of the site and any requirements of the utility provider.

Electrical transformers for utility interconnections may be above ground if required by the utility provider.

#### **5.14 Compliance with Laws, Ordinances and Regulations**

The construction and operation of all such proposed wind facilities shall be consistent with all applicable local, state and federal requirements, including but not limited to all applicable safety, construction, environmental, electrical, communications and FAA aviation requirements

#### **5.15 Accessory Structures**

All accessory structures to such wind facilities shall comply with the setback and height requirements of the applicable zoning district. All such accessory structures, including but not limited to, equipment shelters, storage facilities, transformers, and substations, shall be architecturally compatible with each other and shall be contained within the turbine tower whenever technically and economically feasible. Structures shall only be used for housing of equipment for this particular site. Whenever reasonable, structures should be shaded from view by vegetation and/or located in an underground vault and joined or clustered to avoid adverse visual impacts.

#### **5.16 Abandonment or Decommissioning**

##### **A. Removal Requirements**

Any large wind facility which has reached the end of its useful life or has been abandoned shall be removed. When the wind facility is scheduled to be decommissioned, the applicant shall notify the town by certified mail of the proposed date of discontinued operations and plans for removal. The owner/operator shall physically remove the wind facility no more than 150 days after the date of discontinued operations. At the time of removal, the wind facility site shall be restored to the state it was in before the facility was constructed or any other legally authorized use. More specifically, decommissioning shall consist of:

1. Physical removal of all wind turbines, structures, equipment, security barriers and transmission lines from the site.
2. Disposal of all solid and hazardous waste in accordance with local and state waste disposal regulations.
3. Stabilization or re-vegetation of the site as necessary to minimize erosion. The special permit granting authority may allow the owner to leave landscaping or designated below-grade foundations in order to minimize erosion and disruption to vegetation.

##### **B. Abandonment**

Absent notice of a proposed date of decommissioning, the facility shall be considered abandoned when the facility fails to operate for more than one year without the written consent of the special permit granting authority. The special permit granting authority shall determine in its decision what proportion of the facility is inoperable for the facility to be considered abandoned. If the applicant fails to remove the wind facility in accordance with the requirements of this section within 150 days of abandonment or the proposed date of decommissioning, the town shall have the authority to enter the property and physically remove the facility at the owner's expense. The Town may, at its option, impose a lien on the property according to statute for the removal of the wind facility.

##### **C. Financial Surety**

The special permit granting authority may require the applicant for utility scale wind facilities to provide a form of surety, either through escrow account, bond or otherwise, to cover the cost of removal in the event the town must remove the facility, of an amount and form determined to be reasonable by the special permit granting authority. Such surety will not be required for municipally or state-owned facilities.

#### **5.17 Proof of Liability Insurance**

The applicant shall be required to provide evidence of liability insurance in an amount and for a duration sufficient to cover loss or damage to persons and structures occasioned by the failure of the facility.

#### **5.18 Emergency Services**

The applicant shall provide a copy of the site plan to the local emergency services entity, as designated by the special permit granting authority. Upon request the applicant shall cooperate with local emergency services in developing an emergency response plan.

#### **5.19 Location Preference**

The following locations for large wind facilities are ranked in order of preference

- A. The use of land which has already been developed for another similar purpose is preferred, such sites of other towers or the path of high-power electric lines.
- B. The use of municipal lands which comply with other requirements of this Section, and where visual impact can be minimized and mitigated, shall be encouraged.
- C. The use of land, distant from higher density residential properties, and where visual impact can be minimized shall be encouraged.
- D. Location can be accessed from existing developed roads in order to avoid creation of new roads and disruption of vegetation.

## **6.0 Special Permit Process**

### **6.1 Application**

The application for a wind facility shall be filed in accordance with the Leicester Planning Board Rules and Regulations for Special Permit Applications.

### **6.2 Criteria for review and approval.**

- A. A special permit may be granted under this section if the Planning Board finds that:
  - 1. the requirements for a special permit for the applicable zoning district and each of the standards set forth above have been met
  - 2. the specific site is an appropriate location for such use;
  - 3. the use is not expected to adversely affect the neighborhood;
  - 4. there is not expected to be any serious hazard to pedestrians or vehicles from the use;
  - 5. the size, height and design are the minimum necessary.
- B. The Planning Board shall also impose, in addition to any applicable conditions specified in this section, such conditions as it finds reasonably appropriate to carry out the intentions of the Bylaw, including, but not limited to: screening, lighting, fences, modification of the exterior appearance of the structures, limitation upon size, method of access or traffic features, parking, removal upon cessation of use or other requirements. Such conditions shall be imposed in writing and the applicant may be required to post bond or other surety for compliance with said conditions in an amount satisfactory to the Planning Board.

### **6.3 Expiration of Permit**

- A. The special permit shall lapse if substantial use or construction has not commenced within one year of the date of issuance, except for good cause shown (including but not limited to appeals of the grant of the special permit or litigation enjoining the construction under the permit), and provided further that such construction, once begun, shall be actively and continuously pursued to completion within a reasonable time.
- B. The special permit shall lapse if the wind facility is not used for twelve consecutive months.

## 5.12 Small Wind Facilities

**[New bylaw voted STM 2-18-2009]**

### 1.0 Purpose

The purpose of this by-law is to provide for the construction and operation of small wind facilities as an alternative energy source and to provide standards that address public safety for the placement, design, construction, monitoring, modification and removal of wind facilities and minimize impacts on scenic, natural and historic resources of the Town of Leicester.

### 2.0 Definitions

**Height:** The height of a wind turbine measured from natural grade to the tip of the rotor blade at its highest point, or blade-tip height.

**Rated Nameplate Capacity:** The maximum rated output of electric power production equipment. This output is typically specified by the manufacturer with a "nameplate" on the equipment.

**Small Wind Facility:** All equipment, machinery and structures utilized in connection with the conversion of wind to electricity. This includes, but is not limited to, storage, electrical collection and supply equipment, transformers, service and access roads, and a wind turbine, which has a rated nameplate capacity of 60 kW or less and which is intended to provide power primarily for on-site uses as opposed to generation for sale to the commercial power grid. (More than one small wind facility on a lot would be considered a large wind facility.)

**Wind Monitoring or Meteorological Tower (Met Towers):** A temporary tower equipped with devices to measure wind speeds and direction, used to determine how much wind power a site can be expected to generate.

**Wind turbine:** A device that converts kinetic wind energy into rotational energy that drives an electrical generator. A wind turbine typically consists of a tower, nacelle body, and a rotor with two or more blades.

### 3.0 Applicability

No small wind facility shall be erected, constructed, installed or modified as provided in this section without first obtaining a special permit from the Planning Board. This section applies to small wind facilities no greater than 60 kilowatts of rated nameplate capacity proposed to be constructed after the effective date of this section. This by-law is not intended to cover roof-mounted, building-integrated, building-mounted or architectural wind systems; this by-law only covers stand-alone tower mounted systems.

### 4.0 Temporary Wind Monitoring Towers (Met Towers)

Temporary Wind monitoring shall be permitted in all zoning districts subject to issuance of a building permit for a temporary structure and subject to conditions imposed by the Building Inspector.

### 5.0 Development Standards

Unless otherwise expressly provided by this section of the bylaw all requirements of the underlying zoning district shall apply and, in addition, the following standards shall apply:

#### 5.1 Visual Impact

The Applicant shall demonstrate to the satisfaction of the Board that the proposed facility will have minimal visual impact.

#### 5.2 Height

Small wind facilities shall be no higher than 120 feet above the current grade of the land. The Planning Board may waive this requirement and allow a height of up to 150 feet if the following conditions are met:

- a) The applicant demonstrates that by substantial evidence that such height reflects industry standards for a similarly sited wind facility;
- b) Such height is necessary for the economic feasibility of the project; and
- c) The facility satisfies all other criteria for granting of the special permit under the provisions of this section.

#### 5.3 Setbacks

Wind turbines shall be set back a distance equal to the total height of the wind turbine from all inhabited structures, overhead utility lines, public road or right of way and property boundaries, provided that no setback shall be required from building or buildings which are on the same parcel and which are served by the wind facility.



#### **5.4 Minimum Lot Size**

Small wind facilities shall be located on a parcel of land that contains a minimum of 80,000 square feet. Only one small wind facility shall be allowed per lot under this bylaw.

#### **5.5 Color, Finish, and Design**

Wind facilities shall be painted a neutral, non-reflective color designed to blend with the surrounding environment, except where FAA regulations require high visibility colors, as demonstrated by the Applicant. Monopole towers are the preferred type of support for all wind facilities.

#### **5.6 Lighting**

Wind turbines shall be lighted only if required by the Federal Aviation Administration. Lighting shall be designed to minimize glare on abutting properties and except as required by the FAA be directed downward with full cut-off fixtures to reduce light pollution. Lighting of other parts of the small wind facility, such as accessory structures, shall be limited to that required for safety and operational purposes, and shall be reasonably shielded from abutting properties.

#### **5.7 Shadow/Flicker**

Wind facilities shall be sited in a manner that minimizes shadowing or flicker impacts. (Flicker refers to the temporary blocking of the sun's rays with each pass of a rotor blade.) The applicant has the burden of proving that this effect does not have significant adverse impact on neighboring or adjacent uses through either siting or mitigation.

#### **5.8 Signs**

There shall be no signs except no trespassing signs, any signs required to warn of danger, or identification of the manufacturer of the wind energy facility. A sign is required that identifies the owner and operator with an emergency telephone number where the owner and operator can be reached on a twenty-four hour basis.

#### **5.9 Unauthorized Access**

Wind turbines or other structures part of a small wind facility shall be designed to prevent unauthorized access. For instance, the tower shall be designed and installed so as to not provide step bolts or a ladder readily accessible to the public for a minimum height of 8 feet above the ground.

#### **5.10 Noise**

Except during short-term events such as high windstorms or utility outages, noise from the proposed wind turbine shall not exceed 60 dBA as measured from the nearest property line. This standard may be met through a 600-foot setback from the nearest property line and otherwise must be demonstrated by the applicant through scientific analysis to the satisfaction of the Planning Board.

#### **5.11 Land Clearing, Soil Erosion and Habitat Impacts**

Clearing of natural vegetation shall be limited to that which is necessary for the construction, operation and maintenance of the small wind facility and is otherwise prescribed by applicable laws, regulations, and ordinances.

#### **5.12 Monitoring and Maintenance**

The applicant shall maintain the small wind facility in good condition. The applicant shall maintain the facility in accordance with applicable manufacturers' warranties. Maintenance shall include, but not be limited to, painting, structural repairs, and security measures.

#### **5.13 Utility Notification**

No small wind facility shall be installed until evidence has been given that the utility company has been informed of the customer's intent to install an interconnected customer-owned generator. Off-grid systems shall be exempt from this requirement.

#### **5.14 Compliance with Laws, Ordinances and Regulations**

The construction and operation of all such proposed small wind facilities shall be consistent with all applicable local, state and federal requirements, including but not limited to all applicable safety, construction, environmental, electrical, communications and FAA aviation requirements.

#### **5.15 Accessory Structures**

All accessory structures to such wind facilities shall comply with the setback and height requirements of the

applicable zoning district. All such accessory structures, including but not limited to, equipment shelters, storage facilities, transformers, and substations, shall be architecturally compatible with each other and shall be contained within the turbine tower whenever technically and economically feasible. Structures shall only be used for housing of equipment for this particular site. Whenever reasonable, structures should be shaded from view by vegetation and/or located in an underground vault and joined or clustered to avoid adverse visual impacts.

#### **5.16 Abandonment or Decommissioning**

Any small wind facility which has reached the end of its useful life or has been abandoned shall be removed. A small wind facility shall be considered abandoned when it fails to operate for one year. Upon a Notice of Abandonment issued by the Building Inspector, the small wind facility owner will have 30 days to provide sufficient evidence that the system has not been abandoned or the town shall have the authority to enter the owner's property and re- move the system at the owner's expense.

#### **5.17 Proof of Liability Insurance**

The applicant shall be required to provide evidence of liability insurance in an amount and for a duration sufficient to cover loss or damage to persons and structures occasioned by the failure of the facility.

### **6.0 Special Permit Process**

#### **6.1 Application**

The application for a wind facility shall be filed in accordance with the Leicester Planning Board Rules and Regulations for Special Permit Applications.

#### **6.2 Criteria for review and approval.**

- a. A special permit may be granted under this section if the Planning Board finds that the requirements for a special permit for the applicable zoning district and each of the standards set forth above have been met and that the location of the wind facility is suitable and that the size, height and design are the minimum necessary for that purpose.
- b. The Planning Board shall also impose, in addition to any applicable conditions specified in this section, such conditions as it finds reasonably appropriate to carry out the intentions of the Bylaw, including, but not limited to: screening, lighting, fences, modification of the exterior appearance of the structures, limitation upon size, method of access or traffic features, parking, removal upon cessation of use or other requirements. Such conditions shall be imposed in writing and the applicant may be required to post bond or other surety for compliance with said conditions in an amount satisfactory to the Planning Board.

#### **6.3 Expiration of Permit**

- a. The special permit shall lapse if substantial use or construction has not commenced within one year of the date of issuance, except for good cause shown (including but not limited to appeals of the grant of the special permit or litigation enjoining the construction under the permit), and provided further that such construction, once begun, shall be actively and continuously pursued to completion within a reasonable time.
- b. The special permit shall lapse if the wind facility is not used for twelve consecutive months.

## 5.13 Open Space Residential Development

**[New bylaw voted ATM 5-4-2009, REVISED 5-1-2018]**

### 5.13.01 Purpose

As an alternative to a conventional subdivision and in order to provide for the public interest by the preservation of open space and natural and historic landscape features in perpetuity and to promote variety in single-family residential housing patterns by encouraging development which is designed to accommodate a site's physical characteristics, such as topography, vegetation, water bodies, wetlands, open spaces, such as farmlands and meadows, historic resources major scenic views and wildlife habitats, the following bylaw is established. It is not the intent of this bylaw to make undevelopable land developable or to permit an increase in the number of building lots that would otherwise be possible on a conventional plan but rather to encourage the preservation of important site features.

### 5.13.02 Applicability

Open Space Residential Developments shall be allowed within Suburban Agriculture (SA), Residential 1 (R1), Residential 2 (R2), Residential-Industrial-Business (RIB), Business Residential-1 (BR-1) and Business Industrial-A (BI-A) districts, subject to the requirements of this section for those districts, and in accordance with the additional requirements specified herein.

### 5.13.03 General requirements

- A. Any parcel of land located within a zone permitting Open Space Residential Development containing 10 or more acres, or five or more acres if located adjacent to permanent open space which will be expanded by the proposed plan, and which may be developed as a conventional subdivision, may be considered for an Open Space Residential Development subject to a special permit issued by the Planning Board.
- B. After an Open Space Residential Development application has been submitted, no tree removal, no utility installation, no ditching, grading or construction of roads, no grading of land or lots, no excavation except for purposes of soil testing, no dredging or filling and no construction of buildings or structures shall be done on any part of the development site until the application has been reviewed and approved as provided by this bylaw.

### 5.13.04 Permitted uses

**Permitted uses shall be as follows:**

- A. Detached single-family dwellings, as defined, including all accessory uses as permitted in this Section for the district in which the land lies.
- B. Uses permitted within the required open space as described in this bylaw.
- C. Recreational facilities consistent with Open Space Residential Development purposes.

### 5.13.05 Minimum requirements

- A. Size: The total area of the tract proposed for Open Space Residential Development shall be at least 10 acres.
- B. Density: The total number of building lots on the tract proposed for Open Space Residential Development shall not exceed the number that would be allowed on a site using the standard Zoning Bylaws or Subdivisions Rules and Regulations. The total number of building lots on the tract proposed for Open Space Residential Development shall be calculated using the following equations. The resulting number of lots shall be a guide, and the total number of lots shall be determined by the Board using the following as guidelines:
  - (1) Conventional subdivision plan submitted by the applicant.
  - (2) Information provided by the applicant indicating the development potential of the land.
  - (3) The following equation. The variables for total parcel area and wetlands shall be entered in square feet. When the total number of lots calculated by the equation results in a fraction, the total number of lots shall be rounded down.

$$\text{Total Number of Lots} = \frac{\text{Total Parcel Area} - (.5X \text{ Wetlands}) - (.1X \text{ Total Parcel Area})}{\text{Standard Minimum Lot Size in Applicable District}}$$

- C. Land Division. To be eligible for consideration as an OSRD, the project must constitute a subdivision as defined by MGL Ch. 41, Section 81L.

**5.13.06 Intensity regulations**

- A. The Planning Board may grant a reduction of all intensity regulations of the underlying zoning regulations for all portions of an Open Space Residential Development if the Planning Board finds that such reduction will result in better design, improved protection of historic, natural and scenic resources and will otherwise comply with these regulations, provided that in no instance shall any lot deviate from the following Table of Minimum Requirements.

**TABLE OF MINIMUM REQUIREMENTS**

	<b>SA</b>	<b>R1 BR-1</b>	<b>R2 RIB, BI-A</b>
Minimum area (square feet)	20,000	15,000	10,000
Minimum frontage (feet)	100	100	100
Minimum setbacks(feet)	20	20	20

- B. The lot width requirement contained in Section 1.3, Definitions, definition of "lot frontage," may be waived by the Planning Board in order to achieve the purposes of this article.
- C. Dead-end streets may be permitted in an Open Space Residential Development but shall not exceed 1,000 feet in length. No dead-end street shall provide access to more than 10 building lots.
- D. The Planning Board may also grant a reduction of minimum subdivision standards, such as road pavement width or sidewalk requirements if the Board finds that such waivers will result in better site design, improved protection of historic, natural and scenic resources, and will be consistent with the purpose of this Section 5.13. Such waivers shall be subject to further review at the Definitive Subdivision Plan Stage when more detailed engineering information is available.

**5.13.07 Open space use and design standards.**

- A. Within an Open Space Residential Development, no less than 50% of the land area shall be devoted to open space. The open space shall not include land set aside for roads and/or parking uses. The Planning Board may reduce the open space requirement to 30%, if it is demonstrated that a minimum lot area of 45,000 square feet is required because of soils and topographical conditions. No more than 50% of the open space shall contain wetlands as defined by MGL c. 131, §40.
- B. The required open space shall be designed and maintained in accordance with the following standards:
- (1) Areas to remain as naturally existing woods, fields, meadows and wetlands shall be maintained and may be improved in accordance with good conservation practices.
  - (2) Open space shall be planned as large, contiguous units wherever possible. Strips of narrow parcels of open space shall be permitted only when necessary for access or as vegetated buffers along the site's perimeter.
  - (3) Open space may be in more than one parcel, provided that the size, shape and location of such parcels are suitable for the designated uses.
  - (4) No more than 10% of the open space shall be covered by man-made impervious surfaces.
  - (5) Open space may be used for active and passive recreation, conservation, forestry, agriculture, natural buffers, structures necessary for approved uses, utilities and other facilities necessary for the convenience and enjoyment of the residents, subject to approval by the Planning Board.
  - (6) If detention and/or retention ponds are necessary for the construction of the improvements shown on the subdivision plan, such detention and/or retention ponds shall not be located within the open space shown on such plan. The Planning Board may waive this requirement if the Board finds that the integrity and significance of the open space and the benefit of the open space to the Town are not compromised, and that the open space created conforms to the intent and purpose of this article. In no case, however, shall permanent clearing for drainage improvements or utilities, including detention and/or retention ponds, exceed 5% of any open space parcel.
- C. **Buffer areas.**
- (1) There shall be a land area known as a "buffer" at the perimeter of the site consisting of trees, shrubs, vegetation and topographic features sufficient to separate and/or screen the development from abutting properties. This buffer shall be no less than 100 feet in width. The buffer shall be considered open space and shall be restricted in accordance with Section 5.13.08 below. Upon a finding by the

Planning Board that a buffer of lesser width would be sufficient to screen and/or separate the development from adjacent property, the buffer may be reduced.

- (2) The Board may require no-cut easements, conservation restrictions or similar land use restrictions where the buffer requirement has been reduced. These easements and restrictions shall be on private property, shall not be considered a buffer and shall not be included in open space calculations.
- (3) Retention and/or detention ponds may be permitted in the buffer area upon approval of the Planning Board.
- (4) Buildings, as defined by the Leicester Zoning Bylaw, shall not be permitted in the buffer area unless they are pre-existing. Other structures, as defined by the Leicester Zoning Bylaw (such as pump stations, retaining walls, etc.), may only be allowed upon approval of the Planning Board.
- (5) Buffer areas shall remain in their current natural state. If in the opinion of the Planning Board the current natural state is insufficient to adequately separate and/or screen the site from abutting properties, additional trees, shrubs and/or plantings shall be required.

#### **5.13.08 Open space ownership and management**

- A. Open space in any Open Space Residential Development shall, at the Planning Board's election, be conveyed to: a) the Town or the Town's Conservation Commission for open space use; b) a nonprofit corporation, the principal purpose of which is the conservation of open space and any of the purposes for such open space set forth above; or c) a corporation or trust owned or to be owned by the owners of lots within the development. If a corporation or trust owned by the owners of lots is utilized, ownership thereof shall pass with the conveyances of the lots. In any case where such land is not conveyed to the town, a conservation restriction enforceable by the Town shall be recorded, which shall provide that such land shall be kept in an open or natural state and shall not be built upon for residential use or developed for accessory uses, such as parking or roadway.
- B. All open space shall be dedicated as soon as practical and the specific deadline for each project shall be addressed in the decision of the Planning Board.
- C. If the open space is not to be conveyed to the town, the applicant for an Open Space Residential Development special permit must include a program describing how the open space will be maintained in perpetuity to standards satisfactory to the Planning Board. The applicant shall also provide as part of the open space proposal an agreement empowering the Town to perform maintenance of the open space in the event of failure to comply with the program included in the application pursuant to the preceding sentence, provided that, if the Town is required to perform any maintenance work, the owners of lots within the Open Space Residential Development shall pay the cost thereof and that the cost shall constitute a lien upon their properties until said cost has been paid.
- D. The Planning Board may require that all or such part of the open space as the Planning Board deems appropriate shall be clearly identified and marked on the ground prior to the commencement of any construction activity.

#### **5.13.09 Application and review process**

- A. The application process for an Open Space Residential Development is comprised of two steps. In the first step, the applicant submits a special permit application, which describes the overall development plan. The Planning Board shall grant or deny a special permit based upon the information contained in the special permit application. If the special permit is granted, the applicant then submits a definitive plan, as described below, based upon the concept plan. The Planning Board then reviews the plan as a Definitive Subdivision Plan. Two separate public hearings, one for the special permit and one for the Definitive Plan, must be held. Applicants shall submit applications for an OSRD Special Permit in accordance with the Planning Board's Special Permit Rules and Regulations.
- B. **Special Permit Criteria**  
The special permit shall be granted only if the Planning Board finds each of the following:
  - (1) The development meets the purpose of an Open Space Residential Development as described in Section 5.13.01.
  - (2) The site design shall preserve and, where possible, enhance the historic and natural features of the property, including scenic views, by adapting the location and placement of structures and ways to the existing topography in order to minimize the amount of soil removal, tree cutting and general

disturbance to the landscape and surrounding properties.

- (3) The site design shall identify and ensure preservation of significant and special historic and natural features.
- (4) The open space is designed in accordance with the standards set forth in this Section 5.13.
- (5) The parcel could be developed as a conventional subdivision under existing local, state and federal land use regulations.
- (6) The Open Space Residential Development provides for efficient use and delivery of municipal and other services and infrastructure.

**C Definitive plan.**

If the Open Space Residential Development special permit is granted, the applicant shall submit a plan in conformity with the requirements and procedures for definitive plan submission and review under the Subdivision Rules and Regulations of the Planning Board. The overall concept shall only be reconsidered if there is substantial variation between the definitive plan and the concept plan. A substantial variation shall be defined as an increase in the number of lots, a decrease in the open space acreage, a change in the layout which causes dwelling units or roadways to be placed closer to a dwelling unit within 500 feet of the project and/or a change in the development pattern which adversely affects natural landscape features and open space. If the Planning Board finds that a substantial variation exists, it must hold a public hearing on the modifications of the concept plan.

**5.13.10 Duration of approval**

Notwithstanding anything to the contrary within/without this article, any special permit granted by the Planning Board for an Open Space Residential Development shall lapse and terminate automatically within two years from the date of issue, which two years shall not include time required to pursue or await determination of an appeal referred to in MGL c. 40A, § 17, unless any construction work contemplated thereby shall have commenced and proceeded in good faith continuously to completion, except for good cause.

## 5.14 Ground-Mounted Solar Energy Systems

[STM 11-8-2011, Revised ATM 5-2-2017, STM 10-30-2018, & ATM 5-7-2019]

### 1.0 Purpose

The purpose of this bylaw is to facilitate and appropriately regulate the creation of ground-mounted solar energy systems by providing standards for the placement, design, construction, operation, monitoring, modification and removal of such installations that address public safety, minimize impacts on scenic, natural and historic resources and to provide adequate financial assurance for the eventual decommissioning of such installations.

### 2.0 Definitions

**Solar Energy System:** Any solar collector or other solar energy device, including appurtenances, mounted on a building or on the ground, the primary purpose of which is to provide for the collection, storage, conversion and distribution of solar energy for space heating or cooling, water heating or generation of electricity.

**Ground-Mounted Solar Energy System:** A solar energy system that is structurally mounted to the ground in any manner, including but not limited to ground anchored pole, rack, or rail installations, non-ground penetrating ballasted installations, or canopy installations above parking lots or driveways; not roof or wall mounted installations.

**Large-Scale Ground-Mounted Solar Energy System:** A ground-mounted solar energy system that occupies 40,000 square feet or more of surface area.

**Medium-Scale Ground-Mounted Solar Energy System:** A ground-mounted solar energy system that occupies more than 1,000 but less than 40,000 square feet of surface area.

**Small-Scale Ground-Mounted Solar Energy System:** a ground-mounted solar energy system that occupies 1,000 square feet of surface area or less.

### 3.0 Applicability

This section applies to ground-mounted solar energy systems proposed to be constructed after the effective date of this section. Roof or wall mounted solar energy systems are not subject to this bylaw. This section also pertains to physical modifications that materially alter the type, configuration, or size of these installations or related equipment.

### 4.0 General Requirements

Ground-mounted solar energy systems shall be allowed and permitted as described in the table below:

Y= allowed by-right with building permit, SPR = Site Plan Review Required (Section 5.2).

SP = special permit from Planning Board required, N = prohibited

Size	SA	R1 & R2	NB & CB	B & RIB	HB-1, HB-2, BR-1, BI- A, and I	Watershed Overlay District
Small-Scale Ground-Mounted Solar Energy System	Y	Y	Y	Y	Y	Y
Medium-Scale Ground-Mounted Solar Energy System	SP	SP	N	SPR <sup>1</sup>	SPR <sup>1</sup>	SP
Large-Scale Ground-Mounted Solar Energy System	SP	N	N	SP	SPR <sup>2</sup>	SP

<sup>1</sup> Site Plan Review not required for any project that occupies less than 3,000 square feet of surface area.

<sup>2</sup> Major Site Plan Review required (Section 5.2.03.3.B) for any project that occupies 240,000 square feet (5.5 acres) or more of surface area or involves 2 acres or more of tree clearing.

Applications for medium-scale and large-scale ground-mounted solar energy systems shall be filed in accordance with the Leicester Planning Board Rules and Regulations for Site Plan Review Applications and/or Special Permit Applications, as applicable. Where a special permit is required, the Planning Board shall use the general standards for Special Permit Approval contained in the Planning Board Rules and Regulations for Special Permit Applications, any district-specific special permit requirements, and the additional standards contained herein.

## 5.0 Development Standards for Small-Scale Ground-Mounted Solar Energy Systems

Small-scale ground-mounted solar energy systems shall conform to the dimensional requirements of the applicable zoning district, except as follows:

- A. Height shall not exceed twelve (12) feet in height above finished grade.
- B. Building coverage limits shall not apply to solar energy systems.
- C. For the purposes of setback requirements, small-scale ground-mounted solar energy systems shall be considered accessory structures (Section 1.5, Accessory Buildings).

No solar energy system shall be constructed without first obtaining a building permit.

## 6.0 Medium-Scale and Large-Scale Ground-Mounted Solar Energy Systems

Unless otherwise expressly provided by this section of the bylaw all requirements of the underlying zoning district shall apply. In addition, the following standards shall apply to all medium-scale and large-scale ground-mounted solar energy systems:

### 6.1 Compliance with Laws, Ordinances and Regulations

Construction and operation shall be consistent with all applicable local, state and federal requirements, including but not limited to all applicable safety, construction, electrical, and communications requirements. All buildings and fixtures forming part of a solar energy system shall be constructed in accordance with the State Building Code. No solar energy system shall be constructed, installed or modified as provided in this section without first obtaining a building permit.

### 6.2 Dimensional Requirements

Dimensional requirements (lot size, setbacks, etc.) shall follow the requirements of the applicable zoning district (Section 4.2, Schedule of Dimensional Requirements), except as follows:

- A. The minimum frontage shall be fifty (50) feet
- B. Height shall not exceed fifteen (15) feet in height above finished grade. An increase in height may be granted in commercial districts by special permit.
- C. Building coverage limits shall not apply to solar energy systems.
- D. Setbacks shall be as specified below:

Setback Type	SA, R1, R2	B & I	BI-A, HB-1, HB-2, RIB, & BR-1
Setback from all property lines	100	See Section 4.2 <sup>1</sup>	
Setback where abutting a lot with an existing residential use	100	50	50
Setback from Residential District (SA, R1, R2) Boundaries <sup>2</sup>	100	50	100

<sup>1</sup> Dimensional Requirements applicable to commercial structures shall apply in the BI-A, BR-1, RIB, and I districts.

<sup>2</sup> Where a parcel is split by a residential district boundary, the setback shall be measured from the property line on the relevant side(s) of the parcel.

### 6.3 Utility Notification

No medium-scale or large-scale ground-mounted solar energy system shall be constructed until evidence has been given to the Planning Board that the utility company that operates the electrical grid where the installation is to be located has been informed of the solar energy system owner or operator's intent to install an inter-connected customer-owned generator. Off-grid systems shall be exempt from this requirement.

Reasonable efforts, as determined by the Planning Board, shall be made to place all utility connections from the solar energy system underground, depending on appropriate soil conditions, shape, and topography of the site and any requirements of the utility provider. Electrical transformers for utility interconnections may be above ground if required by the utility provider.



#### **6.4 Accessory Structures**

Accessory structures, including but not limited to, equipment shelters, storage facilities, transformers, and substations, shall be architecturally compatible with each other. Inverters shall be installed as far from abutting structures as feasible to mitigate potential noise impacts. Whenever reasonable, structures should be shaded from view by vegetation and/or joined or clustered to avoid adverse visual impacts.

#### **6.5 Lighting**

Lighting of solar energy systems shall be consistent with local, state and federal law. Lighting of other parts of the installation, such as accessory structures, shall be limited to that required for safety and operational purposes, and shall be reasonably shielded from abutting properties. Where feasible, lighting shall be directed downward and shall incorporate full cut-off fixtures to reduce light pollution.

#### **6.6 Signage**

Signs shall comply with Leicester's sign bylaw. A sign shall be required to identify the owner and provide a 24-hour emergency contact phone number. Solar energy systems shall not be used for displaying any advertising except for reasonable identification of the manufacturer or operator of the solar energy system.

#### **6.7 Emergency Services**

The solar energy system owner or operator shall provide a copy of the project summary, electrical schematic, and site plan to local emergency services. Upon request the owner or operator shall cooperate with local emergency services in developing an emergency response plan. All means of shutting down the solar energy system shall be clearly marked. The owner or operator shall identify a responsible person for public inquiries throughout the life of the installation.

#### **6.8 Land Clearing, Habitat Protection, and Screening Requirements**

##### **A. Land Clearing**

Clearing of natural vegetation shall be limited to what is necessary for the construction, operation and maintenance of the solar energy systems or otherwise prescribed by applicable laws, regulations, and bylaws. Vegetation includes all types of vegetation, including trees. Solar energy systems, to the maximum extent feasible, shall be located on previously disturbed sites that do not require tree clearing. Existing vegetation shall remain in required setback areas. In the SA district, land clearing shall not exceed sixty (60%) of the total lot area. Adequate erosion control measures shall be provided for all proposed land clearing. The Planning Board may require phasing of tree clearing to minimize potential erosion control problems.

##### **B. Protection of Natural Resources and Habitat**

Medium-scale and large-scale ground-mounted solar energy systems shall be designed to minimize impacts to agricultural and environmentally sensitive land and to be compatible with continued agricultural use of the land whenever possible. Such systems shall not be located on permanently protected land subject to conservation, preservation, agricultural preservation, and watershed preservation restrictions under MGL Chapter 184, Sections 31-33; Priority Habitat and Bio Map 2 Critical Natural Landscape Core Habitat mapped by the Natural Heritage and Endangered Species Program (NHESP); or "Important Wildlife Habitat" mapped by the DEP. Access driveways shall be constructed to minimize grading, removal of stone walls or roadside trees, and to minimize impacts to environmental or historic resources.

##### **C. Screening/Buffering:**

Medium-scale and large-scale ground-mounted solar energy systems shall be screened year-round from all abutting properties in residential use in all zoning districts and from public and private ways in residential districts (SA, R1, and R2). For purposes of this section, abutting properties shall include adjacent properties and properties directly opposite on any public or private street or way. Such screening shall be provided in the required setback areas and where existing vegetation in setbacks is insufficient for year-round screening purposes shall consist of dense vegetative screening, fencing, berms, or other methods to adequately screen the facility, depending on site specific conditions. Landscaping shall be maintained and replaced as necessary by the owner/operator of the solar energy system.

#### **6.9 Monitoring and Maintenance**

The solar energy system owner or operator shall maintain the facility in good condition. Maintenance shall include, but not be limited to, painting, structural repairs, and integrity of security measures. Site access shall be maintained to a level acceptable to the local Fire Chief and Emergency Medical Services. The owner or operator shall be responsible for the cost of maintaining the solar energy system and any access road(s), unless accepted as a public way.

**6.10 Abandonment or Decommissioning****A. Removal Requirements**

Any medium-scale or large-scale ground-mounted solar energy system which has reached the end of its useful life or has been abandoned shall be removed. When the facility is scheduled to be decommissioned, the applicant shall notify the town by certified mail of the proposed date of discontinued operations and plans for removal. The owner/operator shall physically remove the solar facility no more than 150 days after the date of discontinued operations. At the time of removal, the solar facility site shall be restored. More specifically, decommissioning shall consist of:

1. Physical removal of all solar energy systems, structures, equipment, security barriers and transmission lines from the site.
2. Disposal of all solid and hazardous waste in accordance with local and state waste disposal regulations.
3. Stabilization or re-vegetation of the site as necessary to minimize erosion. The Planning Board may allow the owner to leave landscaping or designated below-grade foundations in order to minimize erosion and disruption to vegetation

**B. Abandonment**

Absent notice of a proposed date of decommissioning, the facility shall be considered abandoned when the facility fails to operate for more than one year without the written consent of the Planning Board. The Planning Board shall determine in its decision what proportion of the facility is inoperable for the facility to be considered abandoned. If the applicant fails to remove the solar facility in accordance with the requirements of this section within 150 days of abandonment or the proposed date of decommissioning, the town shall have the authority to enter the property and physically remove the facility at the owner's expense. The Town may, at its option, impose a lien on the property according to statute for the removal of the solar facility.

**C. Financial Surety**

The applicant for large-scale ground-mounted energy systems shall provide, prior to commencement of site work, and thereafter maintain a form of surety, either through escrow account, bond or otherwise, to cover the cost of removal and site restoration in the event the town must remove the facility, of an amount and form determined to be reasonable by the Planning Board. The Planning Board may require such surety for medium-scale ground-mounted solar energy systems. Such surety will not be required for municipally or state-owned facilities. The applicant shall submit a fully inclusive estimate of the costs associated with removal, prepared by a qualified engineer. The amount shall include a mechanism for calculating increased removal costs due to inflation. The owner shall increase or replenish the surety as necessary to maintain an adequate amount, as determined by the Planning Board in accordance with the requirements of this bylaw.

**6.11 Special Permit Criteria for Ground-Mounted Solar Energy Systems**

Where a special permit is required for a medium-scale or large-scale ground-mounted solar energy system, the Board shall consider Site Plan Approval standards, special permit criteria for the applicable district, and the following additional requirements:

- A. The proposed project shall conform to all requirements for ground-mounted solar energy systems
- B. Land clearing has been minimized to the greatest extent feasible and impacts of clearing have been mitigated.
- C. In the case of a residential district location, the visual impact of the installation on its immediate abutters and the nearby neighborhood has been effectively neutralized through appropriate design, landscaping, fences, berms, etc.
- D. In the case of a commercial district location, that the visual impact of the installation on abutting residential uses has been sufficiently mitigated through appropriate design, landscaping, fences, berms, etc.

**6.12 Zoning Protection for Approved Projects**

The amendments to Section 5.14 adopted at the May 2, 2017 Town Meeting shall not apply to any medium-scale or large-scale ground-mounted solar energy system that received Site Plan Approval from the Planning Board before March 21, 2017 except where any such project fails to obtain a building permit within one (1) year from the date of said Site Plan Approval and commence construction of solar arrays authorized under the building permit within six (6) months of the issuance of the building permit.

**6.13**

The total number of medium and large-scale ground-mounted solar energy systems in Leicester shall be limited to twenty (20). Facilities constructed prior to this bylaw are counted in this total. For the purposes of this bylaw, projects on separate parcels are considered separate projects, even if such parcels are under common ownership.

## **7.0 Temporary Moratorium on the Construction of Medium and Large-Scale Ground-Mounted Solar Energy Systems**

### **7.1 Background**

The Town of Leicester ("Town") currently has 9 approved Large-Scale Ground-Mounted Solar Energy Systems completed or under construction, and another 2 under review. Many of these projects have involved large-scale clear-cutting of trees and ground vegetation, and several have been located in close proximity to abutting residential neighborhoods. Although the Zoning Bylaw adopted pursuant to the vote under Articles 5, 6, 7, 8, and 9 of the November 8, 2011 Special Town Meeting was improved by amendments adopted by the vote under Article 24 of the May 2, 2017 Annual Town meeting, the Town needs further changes to the Zoning Bylaw to protect environmental resources and residential neighborhoods. Therefore, there is an immediate, identified need to protect the interests of the Town and its citizens by establishing long-term land use standards and provisions to ensure that such uses and development will be consistent with the Town's long-term planning interests and Master Plan.

### **7.2 Temporary Moratorium**

The purpose of this moratorium is to allow the Town sufficient time to engage in a planning process to address the effects of such structures and uses in the Town and to enact bylaws in a manner consistent with sound land use planning goals and objectives.

Because the regulation of Medium-Scale or Large-Scale Ground-Mounted Solar Energy Systems, commonly referred to as "solar farms" raises novel legal, planning, and public safety issues, the Town needs time to undertake a planning process to make appropriate amendments to the Zoning Bylaw regarding regulation of Medium-Scale or Large-Scale Ground-Mounted Solar Energy Systems.

Accordingly, the Town intends to adopt a temporary moratorium on the use of land and structures in the Town for Medium-Scale or Large-Scale Ground-Mounted Solar Energy Systems until adjournment of the business portion of the May 2019 Annual Town Meeting to allow sufficient time to address the effects of such structures and uses in the Town and to enact appropriate Zoning Bylaws in a consistent manner.

Notwithstanding any other provision in the Town of Leicester Zoning Bylaw to the contrary, no building permit may be issued for the construction of any Medium-Scale or Large-Scale Ground-Mounted Solar Energy System, and to the extent legally permissible, the Planning Board shall not accept any further application for any Medium-Scale or Large-Scale Ground-Mounted Solar Energy System during the aforementioned moratorium period.

This moratorium shall not apply to Medium-Scale or Large-Scale Ground-Mounted Solar Energy System projects for which a Site Plan Review or Special Permit application was received by the Leicester Planning Board prior to August 7, 2018.

Any Medium-Scale or Large-Scale Ground-Mounted Solar Energy System proposed in an application submitted to the Planning Board prior to August 7, 2018 shall be governed by the provisions of the Town Leicester Zoning Bylaw in effect prior to the first publication of notice of the public hearing on this by-law required by M.G.L. c. 40A, § 5.

## 5.15 MEDICAL MARIJUANA TREATMENT CENTERS AND MARIJUANA ESTABLISHMENTS

*[New Bylaw voted May 7, 2013, Revised 5/1/2018 and 5/7/2019]*

### 5.15.01 Purpose and Intent:

To provide for the limited establishment of Medical Marijuana Treatment Centers and Marijuana Establishments in appropriate places and to minimize the adverse impacts of Medical Marijuana Treatment Facilities and Marijuana Establishments on residential neighborhoods, schools and other places where children congregate, and other land uses potentially incompatible with said facilities.

### 5.15.02 STANDARDS:

#### A. General

All aspects of a Medical Marijuana Treatment Center or Marijuana Establishment must take place at a fixed location within a fully enclosed building with opaque walls and shall not be visible from the exterior of the building. (Greenhouses with transparent or translucent walls are prohibited: glass or other transparent roofs are allowed. See related subsection J., Lighting). No outside storage of marijuana, related supplies, or educational materials is permitted. Medical Marijuana Treatment Centers and Marijuana Establishments are not permitted as a home occupation. Site Plan Review is required for all Medical Marijuana Treatment Centers and Marijuana Establishments, including when the facility will reuse an existing structure.

#### B. Buffer Requirements

No Medical Marijuana Treatment Center or Marijuana Establishment may be located within required buffer areas. Buffers shall be 500 feet for Medical Marijuana Treatment Centers and Marijuana Retailers, Consumer Sales Only and 200 feet for Marijuana Establishments, Non-Retail, from the following: residential zoning districts (SA, R1, and R2), and pre-existing public or private schools (pre-school through grade 12). Distance shall be measured in a straight line as the shortest between the Medical Marijuana Treatment Center or Marijuana Establishment building and residential district boundaries, and as a straight line from the nearest point of the property line in question to the nearest point of the property line where the Medical Marijuana Treatment Center or Marijuana Establishment is or will be located for schools.

#### C. Signage

All business signage shall be subject to the requirements of the permitting requirements of all applicable agencies within the Commonwealth of Massachusetts and the requirements of Leicester Zoning Bylaw

#### D. Ventilation/Odor

All Marijuana Establishments shall be ventilated in such a manner that no odor from marijuana or its processing can be detected by a person with an unimpaired and otherwise normal sense of smell at the exterior of the Medical Marijuana Treatment Center or Marijuana Establishment or at any adjoining use or property

#### E. Security

All Medical Marijuana Treatment Centers and Marijuana Establishments shall provide adequate security measures to ensure that no individual participant will pose a direct threat to the health or safety of other individuals, and that the storage and/or location of cultivation of marijuana is adequately secured in enclosed, locked facilities.

#### F. Permitting

All Medical Marijuana Treatment Centers and Marijuana Establishments shall meet all of the permitting requirements of all applicable agencies within the Commonwealth of Massachusetts and will as proposed be in compliance with all applicable state laws and regulations.

#### G. Private Clubs

Clubs, lodges, or other private grounds (non-profit and private) allowing on-site consumption of marijuana or marijuana products, but not operating as a licensed marijuana social consumption operator are prohibited.

#### H. Conversion

The conversion of a Medical Marijuana Treatment Center (also known as a registered marijuana dispensary or RMD) licensed or registered not later than July 1, 2017 that is engaged in the cultivation, manufacture or sale of marijuana or marijuana products in Leicester to a marijuana establishment for adult use (also known as recreational use) engaged in the same type of activity shall be permitted by-right (without a special permit),

but shall require Planning Board Site Plan Review. Abutters, and abutters to the abutters within three hundred feet of the property line of the applicant, shall be notified of the date and time of the Site Plan Review discussion.

- I. Limitations  
Marijuana Retailers, Consumer Sales Only shall be limited to 1 establishment in the Town of Leicester.
- J. Lighting  
Lighting shall not extend beyond property lines. Artificial lighting from within the building(s) shall not create light pollution.

#### **5.15.03 SPECIAL PERMIT REQUIREMENTS:**

The Planning Board shall be the Special Permit Granting Authority for all Marijuana Establishments. Applications shall be submitted in accordance with the Planning Board's Special Permit Regulations. In addition to the special permit approval criteria for the applicable zoning district and the Planning Board's Special Permit Regulations, the Planning Board shall find that the proposed use meets the requirements of this section 5.15.

## 5.16: Earth Filling & Removal

**[New Bylaw ATM 5-7-2019, Article 24]**

### **A. Purpose**

The purpose of this bylaw is to regulate filling of land and earth removal operations to protect of public health, safety and welfare, and to protect the integrity of natural resources in the Town of Leicester.

### **B. Definitions:**

1. EARTH: This term shall include soil, loam, sand, gravel, clay, peat, rock, or other earth material in solid form.
2. EARTH FILLING OPERATION: the permanent filling of land that involves greater than 1,000 cubic yards of or more of earth and/or fill material per calendar year (January through December)
3. EARTH REMOVAL OPERATION: Any commercial mining, stripping, quarrying, filling, digging or blasting of earth originating from the Town of Leicester and its transportation into or out of the Town of Leicester.
4. FILL MATERIAL: Any geologic, man-made, recycled or processed material including in its entirety or as a proportion containing clay, rock, sand, gravel, peat and sediment. Material meeting the Federal and/or State definition of solid or hazardous waste or as toxic, infectious, radioactive, corrosive, or reactive material is specifically excluded.
5. FILLING OF LAND: The importation, use, redistribution, alteration or movement of earth and or fill material on or within any land area or water body within the Town of Leicester.
6. GRAVEL: Loose fragments of rock or coarse aggregate resulting from natural disintegration and abrasion of rock or processing of weakly bound conglomerate.
7. LOAM OR TOPSOIL: A soil consisting of a friable mixture of varying proportions of clay, sand, silt, and organic matter.
8. PROCESSING: The sorting or separation of earth into distinct categories based on particle size or type usually through the use of a screening process, not including stone crushing.
9. SILT: Loose sedimentary material with rock particles usually less than 1/16 mm or less in diameter based on the Wentworth scale of measurement.
10. SITE: A distinct portion of contiguous lots, under the same or different ownerships, on which an earth removal and/or fill operation is conducted, or is proposed to be conducted, under the Permit.
11. STONE CRUSHING: The mechanical operation which creates smaller sized stones or stone products from larger sized stones, boulders or particles typically using a crushing plant or similar machinery.
12. SIGNIFICANTLY GREATER CONCENTRATION: The concentration of a substance in earth or fill materials as measured by Federal or State-approved analytical methods, which is one order of magnitude or greater in concentration than the same substance measured in existing, pre-fill earth materials.

### **C. Applicability**

1. A Special Permit from the Planning Board shall be required for:
  - a. The filling of land that involves greater than 1,000 cubic yards of or more of earth and/or fill material per calendar year (January through December).
  - b. Earth removal operation that that involves excavation of more than 1,000 cubic yards of earth material per calendar year (January through December).
2. Contiguous parcels under the same ownership or right of operation shall be considered one location for the purpose of this bylaw.

### **D. Exemptions from Special Permit Requirements**

1. Earth removal or placement of fill associated with the installation of septic systems, which shall be governed by the Commonwealth of Massachusetts Environmental Code (Title 5, 310 CMR 15.00).

2. Earth removal or the placement of fill associated with the installation of foundations for new buildings and/or building additions, which shall be governed by M.G.L. c. 143 and the Commonwealth of Massachusetts Building Code (780 CMR).
3. Earth removal or the placement of fill associated with grading and/or landscaping in connection with the otherwise lawful construction of new driveways, structures, buildings and/or building additions.
4. Earth removal or the placement of fill associated with the normal use of a cemetery.
5. Earth removal or the replacement of fill in connection with commercial agriculture, aquaculture, silviculture, horticulture, floriculture or viticulture compliant with the provisions of MGL c.40A, §3.
6. Earth removal or the placement of fill, where the operation occurs entirely within an individual parcel or between contiguous parcels under common ownership and where a town-accepted public way is not used for the transportation of the material.
7. Earth removal or the placement of fill related to a new subdivision road that has been approved by the Planning Board, or by the Zoning Board of Appeals pursuant to M.G.L. c. 40B, where there is already a bond in place with the Town to ensure performance.
8. Earth removal or the placement of fill for the construction, maintenance and repair of fire ponds, existing public roadways or the installation of public utilities and appurtenances.
9. Operations lawfully in existence at the time of adoption of this bylaw to the extent that such operations are protected by MGL c.40A, §6.

**E. Prohibited Activities and Uses:**

The following activities and uses are prohibited in the Town of Leicester:

1. Use or importation of earth or fill materials whose quality would either meet Federal or State criteria for definition as being toxic, reactive, radioactive, corrosive, explosive, hazardous, infectious, oil-impacted, or as a hazardous or solid waste.
2. Use or importation of earth or fill containing toxic, reactive, corrosive, hazardous, infectious, or solid waste at individual concentrations, or presence by weight or volume, which would render such material a regulated substance or material subject to M.G.L. c. 21E or as a Solid Waste as defined in the regulations promulgated by the Massachusetts Department of Environmental Protection as 310 Code of Massachusetts Regulations (CMR) 19.00.
3. Use or importation of earth or fill at any location not otherwise regulated or permitted for acceptance of earth materials containing toxic, reactive, radioactive, corrosive, hazardous, infectious, oil, solid waste, or metals when such fill materials contain concentrations of these substances less than regulatory criteria established for reporting or special handling purposes but with one or more significantly greater concentrations by weight or volume than existing, pre-fill concentrations.
4. Transport of earth or fill materials in a manner which is prone to release the same during transport.
5. Use of earth or fill materials in a manner which renders the fill area structurally unstable, produces uncontrolled leachate or off-gases, creates nuisance conditions, creates uncontrolled storm water run-off, siltation, or visually apparent erosion of fill materials, or where finished fill grading slopes are not properly stabilized.
6. Construction of permanent structures over or adjacent to areas of fill unless the fill material is structurally stable and free of emissions or other hazardous criteria relative to permanent building construction and use.
7. Use of fill material which may cause chemical or physical impact to off-site ground water, surface water, or wetland resource areas without specific Soil Management Plan and field procedures designed to prevent degradation of these natural resources. This prohibited use specifically includes, but is not limited to, fill materials containing nutrient or salt concentrations at significantly greater concentrations than pre-existing soil conditions on the site.

## **F. General Standards**

### **1. Earth Filling Operations:**

- a. Throughout the length of the project, the applicant must identify the point of earth material origin and receiving location for fill material and must document that 1) that the earth material is not otherwise prohibited from use as fill material in accordance with Leicester's Zoning Bylaw and Regulations or other applicable Federal and State standards, regulations, and guidelines; and, 2.) that a Massachusetts Licensed Site Professional (LSP) has compared analytical results of earth materials to existing, pre-fill conditions specific to the location and determined that the concentrations of substances in the earth materials intended for use as fill do not contain significantly greater concentrations than existing, pre-fill conditions for that location. The applicant will facilitate off-site inspections at points of origin for earth materials if requested by the Planning Board or its agents.
- b. The LSP shall perform site inspections during the course of the project as specified by the Planning Board to ensure compliance with Leicester's Bylaws and Regulations and shall upon completion of work provide written certification signed and stamped stating that all earth materials used for fill comply with Leicester's Bylaws and Regulations and applicable Federal and State Regulations.
- c. Should an applicant or Special Permit holder seek an Administrative Consent Order (ACO) from the Massachusetts Department of Environmental Protection to use or deposit earth or fill materials in the Town, the Town reserves all rights to impose additional requirements upon the applicant or Special Permit holder to assure mitigation of all impacts or effects of the activities undertaken pursuant to such ACO.

### **2. Earth Removal Operations**

- a. All topsoil and subsoil stripped from operation areas shall be stockpiled, seeded with an erosion control seed mixture, and used in restoring the area.
- b. If erosion control structures are utilized, these devices shall be in place and stabilized before excavation can begin in the affected area. These structures shall be inspected and maintained in accordance with the approved plan and the capacity of the structural device.
- c. Except for fire ponds, no area shall be excavated so as to cause the accumulation of free-standing water. Drainage shall be provided as needed in accordance with accepted engineering and conservation practices. Measures shall be taken to ensure that silting and sedimentation of nearby streams is not caused by a temporary or permanent drainage systems on site. Drainage shall not lead directly into streams, ponds, abutting properties nor shall drainage from access roads drain directly onto public ways.
- d. The active excavation area shall not exceed a total of three (3) acres at any one time. Natural vegetation shall be left and maintained on undisturbed land for screening and noise reduction purposes.
- e. Restoration shall be carried on simultaneously with excavation, so that when any three (3) acre operation area has been excavated, at least two (2) acres shall be restored before work commences on the next contiguous three (3) acres.

## **G. Financial Security; Inspection of Conditions**

1. The applicant shall provide financial surety in the form of a cash deposit or bond, or similar financial surety acceptable to the Planning Board, to insure faithful performance of the work to be undertaken pursuant to the conditions of approval or approval with modifications, and conditioned upon completion of the regulated activity in accordance with the conditions established by the Planning Board at the time of granting of the Special Permit or any subsequent changes of such conditions.
2. The Planning Board may waive or reduce the financial surety requirements, but no such financial surety shall be released, until the applicant has complied with the conditions of approval and this bylaw. The Planning Board shall act on a requested release of the financial surety within sixty-five (65) days of submission of the applicant for such release.

## **H. Special Permit Procedures**

1. The Planning Board may adopt and periodically amend its Special Permit Regulations for the implementation of this Bylaw. Such Regulations may set forth performance standards for earth removal



and fill operations, impose filing and consultant fees, define additional terms not inconsistent with the Bylaw, and establish administrative procedures. Failure by the Planning Board to adopt such rules and regulations or a legal declaration of their invalidity by a court of law shall not act to suspend or invalidate the effect of this Bylaw.

2. Any person wishing to obtain a Special Permit under this Section shall file a completed application for a Special Permit together with any required supporting data, maps, and the filing fee in accordance with the Planning Board's Special Permit Regulations and Fee Regulations.
3. Any Permit issued is non-transferable and shall automatically expire upon completion of the earth removal or fill project for which it was issued or at such time as may be specified in said Special Permit. In no case shall a Special Permit be issued initially for a period longer than three years. A Special Permit may be renewed for up to two years or lesser time as determined by the Planning Board after evidence is presented that all conditions of the expiring Special Permit have been complied with and the work has been performed in good faith. There is no limit on the number of Permit renewals an Applicant can apply for. A public hearing may be required by the Planning Board, at its discretion, for renewal of Special Permits.
4. The applicant shall pay reasonable fees for independent inspection to assess adherence to the Planning Board's special permit conditions in accordance with the Planning Board's Special Permit Regulations and Fee Regulations. Said fee shall be deposited into a Revolving Fund Account pursuant to M.G.L. c. 40, §53G.

#### **I. Special Permit Criteria for Earth Removal & Fill Operations**

1. The Planning Board shall use the general standards for Special Permit Approval contained in the Planning Board Special Permit Regulations, any district-specific special permit requirements, and the additional standards contained herein
2. Permits for earth removal and/or fill operations shall be granted by the Planning Board only upon its written determination that the proposed use shall not cause substantial detriment to the neighborhood, or the Town, considering the characteristics of the site and the proposal in relation to the site and surrounding environment. In addition to any specific factors that may be set forth elsewhere in this Bylaw and its associated Regulations, such determination shall include consideration of each of the following:
  - a. Impacts on the natural environment
  - b. Traffic flow and safety, including loading and unloading; and
  - c. Management of stormwater
3. No Special Permit shall be issued for the removal of earth or the placement of fill in any location if such an operation will:
  - a. endanger the public safety, public health or constitute a nuisance; or
  - b. produce noise, dust, or other noxious effects observable at the lot lines of the property in amounts objectionable or detrimental to the normal use of adjacent properties; or
  - c. result in the transportation of materials in such manner as to cause traffic congestion, dust, spillage, noise, or other nuisances or hazards, particularly on residential streets; or
  - d. result in the transportation over ways which will be unduly injured thereby; or
  - e. cause irreparable harm to or loss of important wildlife, wildlife habitat or rare plant species indigenous to the area; or
  - f. result in stormwater damage to abutting properties.

#### **J. Conditions of Special Permit**

The Planning Board may impose reasonable conditions on any special permit granted under this bylaw for earth filling or earth removal operations, including but not limited to the following:

1. Limitations on the size, number, and maximum weight of trucks that may access the property in any 24-hour period as well as routes of travel
2. Requirements for site security procedures
3. Limitations on hours of operation

4. Requirements for regular access to the Town of Leicester or its agents for the purpose of inspection of records or field conditions, and enforcement of this Bylaw
5. Implementation of erosion and sedimentation control measures to prevent material from moving offsite or into wetland or water resource areas
6. Limitations on slope
7. Requirements for ongoing monitoring by licensed professionals at the Applicant's expense to document full conformance with this bylaw and any conditions of approval.
8. Requirements for site stabilization and restoration

**K. Violations and Enforcement**

1. The Planning Board or its authorized agent shall enforce this Bylaw, its regulations, and the requirements and conditions of Permits issued thereunder, and may pursue civil and criminal remedies for violations of the same including but not limited to fines per Zoning Bylaw 6.5 (Penalty).
2. The Building Inspector or other authorized agent of the Planning Board is authorized to conduct inspections on behalf of the Planning Board. To the extent permitted by law, or if authorized by the owner, operator, or other person in control of the site, the Building Inspector or other agent of the Planning Board may enter on the site to conduct inspections.
3. The Building Inspector or other authorized agent of the Planning Board may issue such orders as are deemed necessary to stop violations and ensure compliance with this Bylaw, its regulations, and Permits, including an order to cease and desist operations.
4. If the violator holds a Special Permit issued under this Bylaw, the Planning Board may without prior hearing order that the violator cease and desist from violations of this bylaw and/or conditions of the Special Permit, or may suspend or revoke the Special Permit after a public hearing, at which point all operations shall cease until such time as the necessary measures are taken to assure compliance with this Bylaw and a new Permit is issued.

**L. Change of Conditions**

1. Any change in the activities not included in, or contemplated by, the Special Permit application or approved pursuant to a modification to a Special Permit shall be brought to the attention of the Planning Board or its agents prior to, or immediately following, such change in activities.
2. This notice shall be in writing and include specific actions recommended by the applicant to correct or to demonstrate compliance with the Special Permit and this bylaw. All operations shall be suspended within one operation day following such occurrence and remain suspended until the Planning Board or its agents have reviewed and amended the Special Permit with the applicants recommended change(s). Nothing herewith shall be interpreted to require acceptance of changed conditions or recommended corrective actions by the Planning Board.

## 5.17 LIVESTOCK AND BACKYARD CHICKENS

**[STM 10-30-2018]**

### 5.17.01 Livestock

- A. The Special Permit Granting Authority for Livestock shall be the Zoning Board of Appeals (ZBA) in all Zoning Districts.
- B. The ZBA may limit the total number of livestock allowed per lot. The keeping of chickens on a lot less than 7,000 square feet is prohibited.
- C. Coops, hutches or other such buildings used to house poultry, rabbits, or other small livestock animals shall be situated not less than twenty-five (25) feet from any inhabited dwelling.
- D. The keeping of chickens requiring a special permit shall meet the requirements of Section 5.17.02, subsections E – H, below.

### 5.17.02 Backyard Chickens

- A. Purpose & Intent: To allow the raising of backyard chickens for the personal consumption of eggs and meat for residents, to protect the rights of abutters, and preserve natural water resources
- B. The keeping of backyard chickens shall comply with Board of Health Regulations and shall require an annual license from the Town Clerk. Backyard chickens that are not licensed shall be subject to a fine. The Zoning Enforcement Officer may delegate enforcement under this section to the Animal Control Officer.
- C. The number of backyard chickens allowed is as follows:

<b>Lot Size</b>	<b>Maximum # of Chickens</b>
Less than 7,000 square ft.	0
Equal or greater than 7,000 square ft. but less than .5 acre (21,780 square ft.)	6
Equal or greater than .5 acre (21,780 square ft.) but less than 1 acre (43,560 square ft.)	10
Equal or greater than 1 acre (43,560 sq. ft.) but less than 1.5 acres (65,340 sq. ft.)	12
Equal or greater than 1.5 acres (65,340 sq. ft.)	15

- C. Keeping of a higher density of chickens per square foot or keeping of roosters shall be considered keeping of livestock and would require a special permit from the Zoning Board of Appeals. The keeping of chickens on a lot less than 7,000 square feet is prohibited.
- D. Poultry and eggs produced under this section shall be for personal consumption only (not for sale).
- E. The keeping of Backyard Chickens shall comply with applicable local, state and Federal wetlands regulations and stormwater management regulations. There shall be no construction of any structure or alteration of land within a protected resource area, and or any unlawful discharges of pollution (i.e. fecal waste) into the wetland or buffer zone area. Coops shall not be constructed within 50 ft. of wells.
- F. Chickens shall be confined to the permit holder's property at all times to prevent wandering and straying onto other properties.
- G. Coops will be considered an accessory structure for the purpose of this by-law and shall adhere to all dimensional requirements for accessory structures and shall be situated not less than twenty-five (25) feet from any inhabited dwelling. All coops shall be of durable construction. Such structures shall be elevated to a height that allows for adequate cleaning and be designed so as

to prevent the harborage of rodents and insects. The owner shall provide for tightly covered and vermin-proof storage of dry domesticated animal feed.

H. Poultry runs shall be situated not less than fifteen (15) feet from adjoining property lines.

**5.17.03 Exempt Agricultural Use**

Nothing in this section is intended to regulate the keeping, raising, or breeding of livestock as part of a commercial agricultural enterprise on two (2) or more acres meeting the requirements of MGL Chapter 40A, Section 3;

## SECTION 6: ADMINISTRATION

### 6.1 ENFORCEMENT

This by-law shall be enforced by the Zoning Enforcement Officer under the authority of Section 7 of Chapter 40-A of the Massachusetts General Laws.

### 6.2 BUILDING PERMITS

No building permit shall be issued until the construction or alteration of a building or structure, as proposed, shall comply in all respects with the provisions of this by-law or with a decision rendered by the Board of Appeals. Any application for such a permit shall be accompanied by a plan accurately drawn, showing the actual shape and dimensions of the lot to be built upon, the exact location and size of all buildings or structures already on the lot, the location of the new buildings to be constructed, together with the lines within which all buildings and structures are to be erected, the existing and intended use of each building or structure and such other information as may be necessary to provide for the execution and enforcement of this by-law.

#### 6.2.01 PHASED GROWTH ZONING BYLAW

*[New bylaw 5/4/1998]*

##### 1) Intent and Purpose

- 1.0 The Town of Leicester wishes to ensure and encourage a steady, manageable growth rate in the community while avoiding extreme fluctuations in the growth rate; and:
  - 1.1. To relate the timing of future residential development to the community's ability to provide services to such development such as fire and police protection and adequate educational facilities;
  - 1.2. To preserve and enhance the existing community character.

##### 2.) Regulations

- 2.0 No building permit for a new residential dwelling unit or units shall be issued unless in accordance with this bylaw.

This bylaw shall apply to all definitive subdivision plans, divisions of land pursuant to M.G.L., Chapter 41, Section 81P (hereafter called "A-N-R division") variances and special permits which would result in the creation of a new dwelling unit or units. Dwelling units shall be considered as part of a single development, for all purposes of this section if located either on a single parcel or contiguous parcels of land, which have been in the same ownership at any time subsequent to the date of adoption of this bylaw.

##### 3.) Planned Growth Rate

- 3.0 All authorizations shall count toward the planned growth rate permitted by this bylaw. Building permits shall not be issued under any development schedule approved under Section 5 during periods when said building permit issuance would result in authorizations of more than 100 dwelling units over a 24 month (2 year) period.
- 3.1 For the purposes of implementing the 100-dwelling unit limitation, the Building Inspector on the first business day of each month shall total the number of building permits issued during the previous 24 months. If the number of dwelling units for which new building permits have been issued during the previous 24 months meets or exceeds 100 in number, then the Building Inspector shall not issue building permits for any additional dwelling unit or units in the then current month, except as permitted by Section 3.2.
- 3.2 In a single development where the number of new dwelling units are 1 to 3 in total, building permits may be issued even if the 100 limit has been reached. Once issued, these exempt permits shall be calculated in the 100-building permit limit as noted in Section 3.0 for the next ensuing month.

##### 4.) Development Schedule

- 4.0 Building permits for new dwelling units shall be authorized only in accordance with the following schedule:

Number of New Units In Development	Dwelling Units/Year*
1 - 3	100%
4 - 10	up to 50%
11 - 20	up to 33%
21 - 40	up to 24%
41+	up to 20%

\*Percent of dwelling units in the development for which building permits shall be authorized each year.

The yearly schedule shall commence from the date of the Planning Board signing of the definitive subdivision plan or A-N-R division or the granting of a special permit or variance if applicable for the development.

4.1-Once a development schedule for a single development is approved in accordance with Section 5, building permits shall not be issued in excess of said schedule, subject to the 100 dwelling unit cap detailed in Section 3.1.

**5.) Requirements**

- 5.1 In order to facilitate review, the developer may submit a written proposed development schedule to the Planning Board as part of any application for approval of a plan subject to MGL, Chapter 41, Section 81P (A-N-R division).
- 5.2 In cases where the developer has elected not to submit a development schedule in accordance with Subsection 5.1, above, the Building Inspector shall refer any application for a building permit on a lot within this type of development to the Planning Board for development scheduling.
- 5.3 The developer shall submit a written proposed development schedule as part of any application for definitive subdivision approval, special permit, or variance that would result in the creation of new dwelling units. In the case of a variance or a special permit granted by the Board of Appeals, the Board of Appeals shall forthwith refer said document to the Planning Board.
- 5.4 The Planning Board is authorized, upon request, to approve a development schedule for any building lots/dwelling units not covered under Subsection 5.1 and 5.3.
- 5.6 Approved development schedules for the types of development described in Subsection 5.1 and 5.3 shall be incorporated, where appropriate, as part of the decision filed with the Town Clerk, whether inscribed on the plan and/or filed as a separate attached document.
- 5.7 No approved development schedule shall take effect for the purposes of obtaining building permits until re- corded at the registry of deeds separately or as part of the subdivision or zoning decision to which it is attached.
- 5.8 If applications for building permits are made at a slower rate than authorized in a development schedule, application for the unused permits from one period may be made in a later period.
- 5.9 If as a result of an applicant seeking approval of a second plan of development on a parcel of land for which authorizations have been previously granted, and the second plan is approved, a new development schedule shall be established. This schedule shall supersede the first development schedule.
- 5.10 Applicants shall submit a development schedule for all land considered part of a single development under Subsection 2.0. After a development schedule is issued for a particular parcel of land, subsequent development schedules for contiguous land that is considered part of the same development under Subsection 2.0 shall only allow building permits to be issued on such land after all building permits authorized in the original development schedule have been issued or the full effective time period for the original development schedule has elapsed.

**6.) Zoning Change Protection**

6.0- The protection against zoning changes as granted by M.G.L. Chapter 40A, Section 6 shall, in the case of a development whose completion has been constrained by this bylaw, be extended to the minimum time for completion allowed under this bylaw.

**7.) Exemptions**

- 7.1 The following developments are specifically exempt from limits of the Phased Growth Bylaw and shall not affect the number of 100 building permits to be issued in the two-year period.
  - 1. An application for a building permit for the enlargement, restoration or reconstruction of a dwelling in existence as of the effective date of this bylaw, provided that no additional residential unit is created.
  - 2. Dwelling units for senior residents, where occupancy of the units is restricted to senior persons through a properly executed and recorded deed restriction running with the land. For the purposes of this Section "senior" shall mean persons over the age of 55.
  - 3. Any tract of land existing and not held in common ownership with an adjacent parcel on the effective date of this bylaw shall receive a one-time exemption for the purpose of constructing a single-family unit on the parcel.

## Section 6.2A DRIVEWAY BY-LAW

### Section 1 DEFINITIONS

The following words used In the By-laws shall have the following meanings, unless a contrary intention clearly appears:

1. **"Person"** shall include a corporation, society, association and partnership.
2. **"Superintendent"** shall mean Superintendent of the Highway Department.
3. **"Way"** shall mean a public or private way.
4. **"Driveway"** shall mean privately owned access to and from a way.

### Section 2 PROHIBITIONS

No person shall construct a driveway which opens on a way unless the owner of the said land on which the driveway is to be constructed has first obtained a written permit from the Superintendent and no person shall construct such a driveway except in accordance with the terms and conditions of such permit and the regulations adopted by the Superintendent pursuant to Section 5 of this By-Law.

### Section 3 APPLICATION AND FEES

1. Each application for a driveway permit shall be made to the Superintendent by the owner of the land on which the driveway is to be constructed.
2. Each application shall include and be accompanied by the following information and supporting documentation:
  - (a) The complete name and residential address of the owner of the land.
  - (b) The complete street address of the land.
  - (c) The plot plan of the land showing, among other features the proposed driveway, the way on which the driveway is open and all buildings and other structures located or proposed to be constructed or placed on the land.
  - (d) Such other information and documentation as may be required by the Superintendent.
3. Each application shall be accompanied by a check made payable to the Town of Leicester in the sum of twenty-five dollars for the permit fee which the Superintendent shall pay over on receipt to the Town Treasurer.

### Section 4 PERMITS

Each permit issued by the Superintendent shall include the following:

1. A provision that the driveway/curb cut permit shall be issued and approved by the Superintendent before a building permit can be issued. A copy of this By-Law shall be presented to each applicant applying for a building permit with the Building Inspector and shall be considered by the Planning Board during their consideration of plans in accordance with M.G.L. Chapter 40 & 41A.
2. Such terms and conditions as the Superintendent deems reasonably necessary to prevent an undue volume of surface water and eroded materials draining and being carried from the land on which the driveway is to be constructed onto the abutting public way.
3. A description of any surface water drainage and erosion prevention facilities which the Superintendent shall require to be installed to insure surface water caused by driveways is properly managed. The Superintendent may require the owner of the property to obtain impact calculations stamped by a registered engineer, together with sufficient written detail to determine the projected impact of surface water drainage on the land of the Town of Leicester and any abutting properties.

### Section 5 REGULATIONS

1. The Superintendent shall consider the requirements of State DPW manual on Uniform Traffic Control Devices, but shall modify these to accord with:
  1. Local Conditions
  2. Compatibility with local road design
2. Driveways shall be located to the best advantage with regard to alignment with the way, profile, sight distance and the like. Unless conditions require it, a driveway shall not be located at the extreme edge of a property.
3. Each lot shall be served by a separate driveway opening onto an approved right of way on which it derives its frontage.

4. A driveway shall be at least 10 feet wide throughout its entire length and shall be compact gravel, hot top or similar materials that will not erode or cause unnecessary dust.
5. Standard street signs shall not be permitted to designate driveways.

## **Section 6 ENFORCEMENT AND PENALTIES**

1. The Superintendent shall enforce the provisions of this bylaw and take appropriate action in the name of the Town of Leicester to prevent, correct, restrain or abate violations of the bylaw and its Rules and Regulations. Any person who violates any provision after ten days of written notice of violation by the Superintendent shall be liable to a penalty of \$50.00. Each day that such a violation continues after said ten day period shall constitute a separate offense.
2. Each and every application for construction within or connection to a town way shall be accompanied by the application fee of twenty-five dollars. Construction within or connecting to a town way which has commenced or was completed without a proper permit described in Section 4 shall pay an application fee of fifty dollars. Such construction or connection must meet all provisions of these regulations. The commencement or completion of construction of a driveway, without a proper permit described in Section 4, connecting to or within a Town way shall pay an application fee of fifty dollars.
3. Permits shall expire one year from issuance. All work must be completed within that time frame. Permits associated with new construction shall be valid as long as the building permit remains in force and has not expired.

## **6.3 CERTIFICATE OF OCCUPANCY**

No building or structure shall be occupied until a certificate of occupancy has been issued by the Building Inspector.

## **6.4 BOARD OF APPEALS**

There is hereby established a Board of Appeals of five (5) members and three (3) associate members to be appointed by the Selectmen, as provided in Chapter 40-A of the General Laws, which shall act on all matters within its jurisdiction under this by-law in the manner prescribed in Chapter 40-A of the General Laws. The Board of Appeals shall have the following powers:

### **6.4.01 APPEALS**

To hear and decide an appeal taken by any person aggrieved by reason of his inability to obtain a permit from any administrative official under the provisions of Chapter 40-A of the General Laws, or by any officer or board of the Town, or by any person aggrieved by any order or decision of the Inspector of Buildings or other administrative official in violation of any provision of Chapter 40-A, General Laws or of this by-law.

### **6.4.02 SPECIAL PERMITS**

Certain uses, structures or conditions are designated as subject to the issuance of a Special Permit as provided in Section 3.2 and elsewhere in this by-law. Upon application duly made to the Board of Appeals by first filing with the Town Clerk, the Board may, in appropriate cases and subject to the appropriate conditions and safeguards, grant a Special Permit.

1. **APPLICATIONS** Written application shall be made to the Board for such permit containing a statement of the proposed use or uses, a site plan showing the proposed site development, and such other related information concerning the proposed use of the premises as the Board shall require.
2. **HEARING, ACTION** The hearing of the Board shall be conducted in accordance with the provisions of M.G.L. Chapter 40-A, Section 8.
3. **CONDITIONS** Special permits shall be granted only upon the concurring vote of four (4) or more members, and only after a consideration by the Building Inspector of the specific site as an appropriate location for the use or structure; the adequacy of public sewage and water facilities, or the suitability of soils for on-lot sewage and water systems; the use developed as a possible adverse effect on the neighborhood, undue nuisance or serious hazard to vehicles or pedestrians; and adequate and appropriate facilities to ensure the proper operation of the proposed use, structure or condition. The Board may also provide for any other conditions or safeguards it deems necessary.
4. If the rights authorized by a Special Permit are not exercised within one (1) year of the date of such Special Permit, they shall lapse, and may be re-established only after notice and new hearing and regulated under Chapter 40-A of the General Laws.



### 6.4.03 VARIANCES

- (A) The Board of Appeals shall have the power, after a public hearing as provided in Section II of the Zoning Act, to grant upon appeal or upon petition regarding land or structures, a variance from the terms of any applicable section of this By-Law. However, the Board of Appeals shall not grant a variance relating to the use of land or structures.
- (B) An application for a variance shall be filed with the Town Clerk, who shall within two (2) business days, transmit a copy of the application to the Board of Appeals.
- (C) The decision of the Zoning Board of Appeals shall be rendered within seventy-five (75) days of the filing of the application with the Town Clerk. Failure of the Zoning Board of Appeals to act within said seventy-five (75) days shall be deemed to be the grant of the relief sought in the application, subject to an applicable judicial appeal as provided for in the Zoning Act.
- (D) The Zoning Board of Appeals shall not grant a Variance unless it specifically finds that each of the following conditions are fulfilled:
  - (1) That owing to the circumstances relating to the soil conditions, shape, or topography of the land or structure involved and especially affecting such land or structure but not affecting generally the zoning district in which it is located, a literal enforcement of the provisions of this Zoning By-Law would involve substantial hardship, financial or otherwise, to the applicant: and
  - (2) That desirable relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of this Zoning By-Law.
- (E) The Zoning Board of Appeals may impose conditions, safeguards and limitations, both of time and of use, including the continued existence of any particular structure, but excluding any condition, safeguard or limitation based upon continued ownership.
- (F) Upon the granting of a Variance, or an extension, modification or renewal thereof, the Zoning Board of Appeals shall issue to the owner and to the applicant, if other than the owner, a copy of its decision, certified by the Zoning Board Of Appeals, containing the name and address of the owner, identifying the land affected, setting forth compliance with the statutory requirements for the issuance of such Variance and certifying that copies of the decision and all plans referred to in the decision have been filed with the Town Clerk.
- (G) No variance or extension, modification or renewal thereof shall take effect until a copy of the decision bearing the certification of the Town Clerk that twenty (20) days have elapsed and no appeal has been filed, or that if an appeal has been filed, it has been dismissed or denied, is recorded in the Worcester County Registry of Deeds and indexed in the grantor index under the name of the owner of record, or is recorded and noted on the owner's certificate of title. The recording or registration shall be the responsibility of the owner or applicant who shall, thereafter, provide the Zoning Board of Appeals with a copy of the decision bearing the stamp of the Registry of Deeds or Land Court indicating the date and time of recording or registration and the book and page number as- signed the document.
- (H) The rights authorized by a Variance shall lapse unless construction is commenced within one (1) year of the grant of the Variance and is continued through to completion as continuously and expeditiously as is reasonable. In the event of such a lapse, the variance may be re-established only after notice and a new hearing.
- (I) It shall be unlawful for any owner or person to reconstruct, convert or alter a structure or change the use, increase the intensity of use, or extend or displace the use of any building, other structure or lot, or change any required limitations or special conditions imposed by the Zoning Board of Appeals in authorizing a Variance without making new application to the Zoning Board of Appeals for approval of such action.

### 6.5 PENALTY

Any person violating any of the provisions of this by-law may be fined not more than \$100.00 dollars for each offense. Each day that such violation continues shall constitute a separate offense.

## **6.6 AMENDMENT**

This by-law may be amended from time to time at an annual or special Town Meeting in accordance with the provisions of Section 5 of Chapter 40-A.

## **6.7 VALIDITY**

The invalidity of any section or provision of this by-law shall not invalidate any other section or provision thereof.

## **6.8 EFFECTIVE DATE**

The effective date of this by-law shall be the date upon which the by-law comes in full force or effect in accordance with the provisions of the General Laws Chapter 40, Section 32, and Chapter 40-A, Section 5, and shall be the date on which such adoption or amendment was voted upon by a Town Meeting; unless said by-law is subsequently disapproved, in whole or in part, by the Attorney General.

## **6.9 ASSOCIATE PLANNING BOARD MEMBER**

In accordance with Massachusetts General Laws, Chapter 40A, Section 9, the Planning Board, acting as Special Permit Granting Authority, is authorized to appoint one Associate Member for the purpose of acting on special permit applications. Said Associate Member shall be appointed by majority vote of the Planning Board and serve a one-year term. The Planning Board Chair may designate the Associate Member to sit on the Board for the purpose of acting on a special permit in the case of absence, inability to act, or conflict of interest on the part of any member of the Planning Board, or in the event of a vacancy on the Board. In the event of a vacancy in the position of Associate Member, the position shall be filled in the same manner as in the case of the original appointment.

## SECTION 7: INTERIM PLANNING OVERLAY DISTRICT

### SECTION 7.1: Water Resources Protection Overlay District

#### 7.1.01 Purpose

The purpose of this section is to prevent the contamination of those areas within Leicester that contribute ground or surface water to existing or planned public water supplies.

#### 7.1.02 Establishment Of District

There is hereby established a Water Resource Overlay District consisting of aquifers, recharge areas and watersheds, which is delineated on a map titled "Leicester Water Resources Protection Overlay District." This map is hereby made a part of this by-law and is on file in the Town Clerk's Office. This district shall be considered as overlying other zoning districts. Any area within this overlay district is subject to the more restrictive designation of either the overlay district or the underlying district. Uses not permitted in the underlying districts shall not be permitted in the overlay districts.

Where the limits of the Water Resources Protection Overlay District are in doubt or in dispute, the burden of proof shall be on the owner(s) of the land in question to show where the bounds should properly be located, based on the criteria stated above. At their own expense, property owners may engage a hydrogeologist or other qualified professional to determine more accurately the location and extent of an aquifer, recharge area or watershed. For parcels partially located in the Water Resources Protection Overlay District, the provisions of Section 2.3.04 of this by-law shall apply.

#### 7.01.03 Definitions

**"Aquifer"** - A geologic formation that can store and transmit significant amount of potable water.

**"Disposal"** - The deposit, injection, dumping, spilling, leaking, incineration or placing of any hazardous material into or on any land or water so that such hazardous material may enter the environment or be emitted into the air or discharged into any waters, including groundwater.

**"Groundwater"** - All water beneath the surface of the ground.

**"Hazardous and Toxic Materials"** - Any substance or combination of substances including liquefied petroleum products, that because of quantity, concentration or physical, chemical or infectious characteristics, poses a significant present or potential threat to water supplies or to human health if disposed of, into or on any land or water in this Town.

**"Hazardous Waste"** - Those substances listed in M.G.L. Chapter 21C.

**"Impervious Area"** - A surface covered by materials or structures on or above the ground that severely limits the amount of precipitation that infiltrates the underlying soil, including, but not limited to, asphalt, roofed buildings, etc.

**"Recharge Area"** - Any area of porous, permeable geologic deposits, but not exclusively, deposits of stratified sand and gravel, through which water from a source drains into an aquifer, and includes any wetland or body of surface water surrounding or adjacent to such area, together with the watershed of any wetland or body of surface water adjacent to such area.

**"M.G.L."** Massachusetts General Law

**"C.M.R."** Commonwealth of Massachusetts Regulation

#### 7.1.04 Use Regulations

##### 1.) Permitted Uses

The following uses shall be permitted by right in the Water Resources Protection Overlay District:

- a. conservation of soil, water, plants and wildlife;
- b. outdoor active and passive recreation;
- c. normal operation and maintenance of roads, utilities and other structures provided there is no significant increase in impervious pavement;
- d. normal operation and maintenance of water bodies and water control, supply and conservation devices;
- e. residential development permitted in the underlying district, provided that the limitations of subsurface,

sewage disposal and percent of property rendered impervious, as defined in this section are not exceeded.

- f. farming, gardening, nursery, conservation, forestry and other similar uses provided that storage of fertilizers, soil conditioners, herbicides, pesticides, manure and other leachable materials is accomplished as defined in this section.

## 2.) Special Permit Uses

The following uses are permitted in the Water Resource Protection District with the issuance of a Special Permit.

The Special Permit Granting Authority for uses under this section shall be the Board of Appeals.

- a. the rendering impervious of more than 15% or 2500 square feet of any lot, but not greater than 30% of any lot; for uses with impervious areas greater than that specified by the By-Law, appropriate measures must be taken to insure that the increase in storm-water runoff (over that amount generated by a lot with the specified impervious area) must be artificially recharged into the ground water. This may be done through such methods as dry wells, infiltration trenches, retention basins, etc. Runoff from these areas shall include facilities for trapping oil, gas and other contaminants before recharge into the ground. These facilities shall be maintained by the owner on an annual basis.
- b. the application of pesticides or fertilizers that are non-domestic and non-agricultural, provided precautions are taken to minimize adverse impacts on surface and ground-water resources;
- c. any commercial or industrial use permitted in the underlying district which involves as a principal activity the manufacture, storage, use, or transport of toxic or hazardous materials provided the activity is in conformance as defined in Section 7.1.04 (3) (I) Hazardous Waste Facilities and Section 7.1.04 (3) (O) Storage of Liquid Hazardous Materials, of this By-Law;
- d. Medium-scale or large-scale ground-mounted solar energy systems

## 3.) Prohibited Uses The following uses are prohibited in the Water Resources Protection District:

- a. disposal or processing of solid or hazardous waste, including but not limited to, transfer stations, landfills and open dumps as defined in 310 C.M.R. 19.006;
- b. automobile salvage or graveyards, and junkyards as defined in M.G.L. c.140B, s.1;
- c. landfilling of sludge and septage, as defined in 310 C.M.R. 32.05;
- d. storage of sludge and septage, as defined in 310 C.M.R. 32.05 unless such storage is in compliance with 310 C.M.R. 32.30 and 310 C.M.R. 32.31;
- e. on-site disposal of process or non-sanitary waste;
- f. individual sewage disposal systems that are designed in accordance with 310 C.M.R. 15.00 to receive more than 110 gallons of sewage per quarter acre under one ownership per day, or 440 gallons of sewerage on any one acre under one ownership per day, whichever is greater, except the replacement or repair of an existing system that will not result in an increase in design capacity above the original design;
- g. storage of sodium chloride, calcium chloride, chemically treated abrasives or other chemicals used for snow and ice removal, stockpiling or disposal of snow or ice removal from highways and streets located outside Zone II that contains sodium chloride, calcium chloride, chemically treated abrasives or other chemicals used for snow and ice removal;
- h. treatment works subject to 314 C.M.R. 5.00 except the following:
  - 1.) the replacement or repair of an existing system(s) that will not result in a design capacity greater than the design capacity of the existing system(s);
  - 2.) the replacement of any existing subsurface sewage disposal system(s) with wastewater treatment works that will not result in a design capacity greater than the design capacity of the existing system(s);
  - 3.) treatment works approved by the Massachusetts Department of Environmental Protection designed for the treatment of contaminated ground or surface waters; and
  - 4.) if the Massachusetts Department of Environmental Protection amends 314 C.M.R. 5.00 on the basis of the Final Generic Environmental Impact Report (FGEIR) on Privately Owned Sewage Treatment Facilities (PSTFs), permitted in accordance with 314 C.M.R. 5.00 as amended.

- i. facilities that generate, treat, store or dispose of hazardous waste that are subject to M.G.L. c.21C and 310 C.M.R. 30.00, except for the following:
  - 1.) very small quantity generators, as defined by 310 C.M.R. 30.00;
  - 2.) household hazardous waste collection centers or events operated pursuant to 310 C.M.R. 30.390;
  - 3.) waste oil retention facilities required by M.G.L. c.21, s.52A; and
  - 4.) treatment works approved by the Massachusetts Department of Environmental Protection designed in accordance with 314 C.M.R. 5.00 for the treatment of contaminated ground or surface waters.
- j. commercial earth removal, or the removal of soil, loam, sand gravel or any other mineral substances within four (4) feet of the historical high groundwater table elevation (as determined from monitoring wells and historical water table fluctuation data compiled by the United States Geological Survey), unless the substances removed are redeposited within forty-five (45) days of removal on site to achieve a final grading greater than four (4) feet above the historical high water mark, and except for excavations for the construction of building foundations or the installation of utility works;
- k. gasoline station, auto or boat repair or body shop;
- l. storage of commercial fertilizers and soil conditioners, as defined in M.G.L.c.128, s.64, herbicides and pesticides unless such storage is within a structure designed to prevent the generation and escape of contaminated runoff or leachate,
- m. storage of animal manures, unless such storage is covered and contained in accordance with the specifications of the United States Soil Conservation Services;
- n. underground storage of liquid hazardous materials, including home heating fuel;
- o. storage of liquid hazardous materials, as defined in M.G.L. c.21E, unless such storage is either in a free standing container within a building or in a free standing container above ground level with protection adequate to contain a spill the size of the container's total storage capacity;
- p. storage of liquid petroleum products of any kind, except those incidental to (1) normal household use and out- door maintenance or the heating of a structure, (2) waste oil retention facilities required by M.G.L. c.21, s. 52A, (3) emergency generators required by statute, rule or regulations, or (4) treatment works approved by the Massachusetts Department of Environmental Protection designed in accordance with 314 C.M.R. 5.00 for the treatment of contaminated ground or surface waters, provided that such storage is either in a freestanding container within a building or in a freestanding container above ground level with protection adequate to contain a spill the size of the container's total storage capacity.

#### 7.1.05 Nonconforming Uses

Any use that is made nonconforming by the adoption of this section may continue, provided, however, that any change, alteration reconstruction, expansion or enlargement of such use is subject to a special permit from the Board of Appeals.

In considering special permit applications for the expansion of nonconforming uses under this section, the Board of Appeals shall not grant a special permit unless it finds that the proposed expansion will not be substantially more detrimental to groundwater supplies than the existing use.

#### 7.1.06 Special permit procedures

- a) Applicants for a special permit under this section shall submit an application to the Town Clerk for transmittal to the Board of Appeals accompanied by five (5) copies of any supporting information or plans.
- b) The special permit application shall contain the following information: existing property boundaries, existing and proposed structures and buildings, existing and proposed topography, all facilities for surface drainage and erosion control, all impervious areas, and those areas left in a natural state. Also, a complete list of all potentially toxic or hazardous materials to be used generated or stored on the premises in quantities greater than those normally associated with household use, accompanied by a description of measures proposed to protect from vandalism, corrosion, leakage and spills.
- c) The Board of Appeals shall refer copies of the application to the Board of Health, Building Inspector, Conservation Commission, the applicable Water District, and any other party deemed appropriate. These Boards have thirty-five (35) days in which to review the application and submit their comments and recommendations. Failure to respond in writing within that time shall be deemed lack of opposition to the granting of the Special Permit.

- d)** The Board of Appeals shall hold a public hearing within sixty-five (65) days of the filing of the application in conformance with the provisions of M.G.L. chapter 40A, Section 9.
- e)** The Board of Appeals may grant a special permit provided that it finds the proposed use:
  - 1.** is in harmony with the purpose and intent of this by-law and will promote the purposes of the Water Resource Protection Overlay District,
  - 2.** is appropriate to the natural topography, soils, and other characteristics of the site to be developed;
  - 3.** will not, during construction or thereafter, have an adverse environmental impact on the aquifer, recharge area or watershed; and,
  - 4.** will not adversely affect an existing or potential water supply.
- f)** In granting such a Special Permit, the Board of Appeals may attach such conditions as they deem reasonable in enforcing the purpose of this Section.

## **SECTION 8: ADULT ENTERTAINMENT**

**[New Bylaw 5/4/98]**

### **Adult Entertainment Bylaw:**

No adult Entertainment Establishment, Adult Bookstore, Adult Video Store, Adult Paraphernalia Store, or Adult Motion Picture Theater may be located within 1,000 feet of a residential zoning district, school, church or other religious use, child care facility, park, playground, or other Adult Live Entertainment Establishment, Adult Bookstore, Adult Video Store, Adult Paraphernalia Store or Adult Motion Picture Theater. Distance shall be measured as the shortest between buildings, or as the shortest distance between the building of the adult use and the lot line of a church, child care facility, school, park, playground or other recreational area.